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Filed.

Mr. Bradley

March 17.
1882.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~232.~~ 28

THE PHŒNIX MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONN., PLAINTIFF IN ERROR,

vs.

CAROLINE R. DOSTER, MARY J. RIDDLE, TAYLOR RIDDLE; AND LEON H. RIDDLE, IRMA M. RIDDLE, AND FRANK RIDDLE, BY THEIR NEXT FRIEND, CAROLINE R. DOSTER.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF KANSAS.

FILED AUGUST 21, 1879.

SUPREME COURT OF THE UNITED STATES.

No. 232.

THE PHŒNIX MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONN., PLAINTIFF IN ERROR,

vs.

CAROLINE R. DOSTER, MARY J. RIDDLE, TAYLOR RIDDLE; AND LEON H. RIDDLE, IRMA M. RIDDLE, AND FRANK RIDDLE, BY THEIR NEXT FRIEND, CAROLINE R. DOSTER.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF KANSAS.

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1 In the circuit court of the United States for the district of Kansas.

CAROLINE R. DOSTER, MARY J. RIDDLE, Taylor Riddle; and Leon H. Riddle, age 13 years; Irma M. Riddle, age 9 years; and Frank Riddle, age 5 years; minors, who sue by their next friend, Caroline R. Doster, plaintiffs,
versus
THE PHŒNIX MUTUAL LIFE INSURANCE Company, of Hartford, Connecticut, defendant. } 2012.

Be it remembered that on this day, to wit, January 25, 1878, the plaintiffs, by their attorneys, filed in the clerk's office of said court their amended petition in said entitled action, which said amended petition is in the words and figures following, to wit:

Amended petition.

UNITED STATES OF AMERICA,
The District of Kansas, ss:

In the circuit court of said district.

CAROLINE R. DOSTER, MARY J. RIDDLE, Taylor Riddle, and Leon H. Riddle; age 13 years; Irma M. Riddle, age 9 years; and Frank Riddle, age 5 years; minors, who sue by their next friend, Caroline R. Doster, plaintiffs,
vs.
THE PHŒNIX MUTUAL LIFE INSURANCE Company, of Hartford, Connecticut, defendant. } Amended petition.

The plaintiffs say—

2 1st. That they reside in the county of Marion, and State of Kansas; and that said Leon H. Riddle, Irma M. Riddle, and Frank Riddle are minors, and sue by their next friend, Caroline R. Doster.

II. That said plaintiff, Mary J. Riddle, was the wife of Jackson Riddle during his life-time and now is his widow, and all the other plaintiffs were and are the children of said Jackson Riddle, deceased, and were such wife and children during all the time hereinafter mentioned.

III. That said defendant, the Phœnix Mutual Life Insurance Company, of Hartford, Connecticut, was on the 20th day of September, 1871, and long before, and ever since has been and now is a life insurance corporation, duly organized and doing business under and by virtue of the laws of the State of Connecticut.

IV. That on the said 20th day of September, 1871, the defendant, in consideration of the sum of two hundred and fifteen dollars in hand paid and the annual payment thereafter to it of the sum of two hun-

dred and fifteen dollars, executed to the plaintiffs and for their use and benefit a policy of insurance on the life of Jackson Riddle, the husband of said Mary J. Riddle, and the father of said other plaintiffs, a true copy of which is hereto attached, marked Exhibit A, and is made a part hereof, whereby said defendant insured the life of said Jackson Riddle in the amount of five thousand dollars for the term of his natural life.

V. That said plaintiffs had a valuable interest in the life of said Jackson Riddle at the time of his death and at the time of effecting said insurance and at all times while said insurance continued and before the same commenced.

VI. That on the 6th day October, 1876, at Tippacanoe County, State of Indiana, said Jackson Riddle died.

VII. That on or about the 28th day of October, 1876, and more than ninety days before the bringing of this suit, the plaintiffs furnished the defendant with due notice and proof, the death of the said Jackson Riddle, and they, together with said Jackson Riddle, otherwise duly performed all the conditions of said policy on their and his part to be performed from the issuance of the same to the present time.

VIII. That said defendant has not paid said sum of five thousand dollars nor any part thereof, though often requested to pay the same, and that by reason of the facts aforesaid said defendant is indebted to said plaintiffs in the sum of five thousand dollars.

Wherefore plaintiffs pray judgment for the sum of five thousand dollars and interest from January 1st, 1877, at the rate of seven per cent. per annum, and the costs of this suit.

FRANK DOSTER, AND
RUGGLES, SCOTT & LYNN,
Attorneys for Plaintiffs.

EXHIBIT A.

PHŒNIX MUTUAL LIFE INSURANCE COMPANY.

Age, 48 years.] HARTFORD, CONN. [Annual premium, $215.00

No. 56960.] Term: Life. Annual payments. [$5,000

This policy of assurance witnesseth that the Phœnix Mutual Life Insurance Company, of Hartford, Conn., in consideration of the representations made to them in the application for this policy, and of the sum of two hundred and fifteen dollars and cents, to them duly paid by Mary J. Riddle, wife & children, and of the annual payment of a like amount on or before the twentieth day of September in every year during the continuance of this policy, do assure the life of Jackson Riddle, of Monticello, in the county of Piatt, State of Illinois, in the amount of five thousand dollars, for the term of his natural life.

And the said company hereby promise and agree to pay the amount of the said insurance at their office in the city of Hartford, Connecticut, to his wife and children, or their executors, administrators, or assigns, in ninety days after due notice and proof of the death of the said party whose life is hereby insured, any indebtedness to the company on account of this policy being first deducted therefrom.

And the said company do further promise and agree that if, after having received not less than three (3) annual premiums, this policy

shall be surrendered while in force a new policy will be issued for the whole amount of even dollars of premiums received by the said company (subject to any indebtedness on account of premiums), without subjecting the assured to any subsequent charge, except the interest annually in advance on all indebtedness on this policy.

This policy is issued and accepted by the assured upon the following express conditions and agreements:

5 First. If the said Jackson Riddle shall at any time during the continuance of this policy, without the consent of the said company previously obtained in writing, visit any part of the western hemisphere lying between the tropics, or of the eastern hemisphere, between the 36th parallel north and the tropic of Capricorn, or engage in the manufacture or transportation of gunpowder or fireworks, or in submarine operations, or in any military or naval service whatsoever (the militia in actual service excepted), or in case he shall die by the hands of justice, or in, or in consequence of, a duel, or of the violation of any law of these States or of the United States, or of any other country which he may be permitted under this policy to visit or reside in, or if any of the declarations or statements made in the application for this policy, upon the faith of which this policy is issued, shall be found in any respect untrue, or in case any note given for the cash part of premium on this policy shall not be paid at maturity, or in case the interest is not paid annually in advance on any notes which may be given for any portion of the premium on this policy, then, and in every such case this policy shall be null and void.

Second. If the said premium shall not be paid at the office of the company in the city of Hartford, Conn., or to any agent of the company on his producing a receipt signed by the president or secretary, on or before the date above mentioned, then, in every such case, the said company shall not be liable for payment of the sum insured, or any part thereof, and this policy shall cease and determine.

6 Third. In every case when this policy shall cease and determine, or become or be null and void, all payments thereon shall be forfeited to this company.

This policy to take effect when countersigned by H. H. Koon, agent at Chicago, Ills.

In witness whereof the said Phœnix Mutual Life Insurance Company of Hartford, Conn., have, by their president and secretary signed and delivered this contract this twentieth day of September, one thousand eight hundred and seventy one.

E. FESSENDEN, *President.*

J. F. BURNS, *Secretary.*

Countersigned this twentieth day of September, 1871.

HENRY H. KOON,
Gen'l Agent.

[Fifty cents. 50. United States int'r' revenue. 50.]

(Endorsed:) No. 2012. In circuit court of U. S., district of Kansas. Caroline R. Doster et al., pl'ffs, vs. The Phœnix Mutual Life Insurance Company of Hartford, Conn. Amended petition. Filed January 25, 1878. A. S. Thomas, clerk. Frank Doster and Ruggles, Scott & Lynn, att'ys for pl'ffs.

And on this day, to wit, February 20, 1878, the defendant, by its attorneys, filed in the clerk's office of said court its answer to amended

petition, which said answer to amended petition is in the words and figures following, to wit:

Answer to amended petition.

UNITED STATES OF AMERICA,
District of Kansas, ss:

In the circuit court of the United States for the district of Kansas.

CAROLINE R. DOSTER, MARY J. RIDDLE, TAYlor J. Riddle, adults; and Leon H. Riddle, age 13 years; Irma M. Riddle, age 9 years; and Frank Riddle, age 5 years; the last three minors, who sue by their next friend, Caroline R. Doster, pl'ffs.
versus.
THE PHŒNIX MUTUAL LIFE INSURANCE Company of Hartford, Connecticut, defendant.

Removed from the district court within and for Marion County, Kansas.

1st. Comes now the said defendant, The Phœnix Mutual Life Insurance Company of Hartford, Connecticut, and for answer to the plaintiff's amended petition filed in the above-entitled cause, denies each and every allegation in said amended petition contained except those hereafter herein expressly admitted.

2nd. And for further answer the said defendant in the above-entitled cause admits that it is a corporation duly created, organized, and was existing under and by virtue of the laws of the State of Connecticut, as charged in said amended petition.

3rd. And the said defendant further admits that it did, on the twentieth day of September, 1871, make, execute, and deliver to Jackson Riddle a certain policy or contract of insurance numbered 56960, whereby, in consideration of the representations made to it in the application for said policy, and the sum of two hundred and fifteen dollars to it duly paid by Mary J. Riddle (wife and children), and of the annual payment of a like amount on or before the twentieth day of September in every year during the continuance of said policy, it did assure
8 the life of said Jackson Riddle, who then resided at Monticello, in the county of Piatt, State of Illinois, in the amount of five thousand dollars, for the term of his natural life; and the defendant did, by said policy promise and agree to pay the amount of said insurance, at their office in the city of Hartford, Connecticut, to the wife and children of the said Jackson Riddle, or their executors, administrators, or assigns, in ninety days after due notice and proof of the death of the said Jackson Riddle, any indebtedness to the defendant on account of said policy being first deducted therefrom. And the said defendant did further promise and agree that if after having received not less than three (3) annual premiums said policy should be surrendered while it was still in force, a new policy would be issued for the whole amount of even dollars of premiums received by the said defendant (subject, however, to any indebtednes on account of premiums), without subjecting the assured to any subsequent charge, except the interest annually in advance on all indebtedness on said policy. That said policy or contract of insurance was issued by defendant and accepted by said Jackson Riddle and the beneficiaries therein upon the following (among

other) express conditions and agreements therein contained, noted as condition second, and words as follows: "Second. If the said premiums shall not be paid at the office of the company, in the city of Hartford, Conn., or to an agent of the company, on his producing a receipt signed by the president or secretary on or before the date above mentioned, then, in every such case, the said company shall not be
9 liable for payment of the sum insured or any part thereof and this policy shall cease and determine." That neither the said Jackson Riddle nor the beneficiaries in said policy, nor any one for them nor either of them paid, or caused to be paid to defendant, at the office of said defendant, in the city of Hartford, Connecticut, or anywhere else, or to any agent of said defendant, the annual premium of two hundred and fifteen dollars, which became due and payable under the conditions of said policy, on the twentieth day of September, A. D. 1876, nor any part thereof, but that they and each of them wholly failed, neglected, and refused to pay the same or any part thereof, after being duly notified so to do by the duly authorized agent of defendant who had in his possession and was ready to produce therefor a receipt signed by the president and secretary of said defendant; and so failed, neglected, and refused to pay said premium then as aforesaid, due, for a long time after the same was overdue and payable, and until after the alleged death of the said Jackson Riddle, as charged in said amended petition. That said policy or contract of insurance was issued by said defendant and accepted by the assured and the beneficiaries therein, upon the following (among other) express conditions and agreements therein contained noted as condition third, and in words as follows:

"Third. In every case when this policy shall cease and determine, or become or be null and void, all payments thereon shall be forfeited to this company." That said Jackson Riddle and the beneficiaries in said policy failed to fulfil and perform the conditions in said contract
10 by them to be fulfilled and performed, and said contract, by virtue of its terms and their failure, neglect, and refusal, ceased and determined on the 21st day of September, 1876, and was never afterwards renewed, or in any manner revived.

4th. That said defendant has among others a certain by-law duly authorized by its charter and passed by its stockholders and directors and promulgated and acted upon by its officers and agents; which expressly prohibits any of its agents from waiving any condition in any of its said policies or contracts of insurance contained, either orally or by writing, and the said Jackson Riddle and the beneficiaries in said policy had notice of the existence and import of said by-law.

5th. That all of said company's agents who were in any manner, directly or indirectly, connected with the making of the contract or policy of insurance sued upon in this case, or with any renewal of same, were agents of limited powers and were prohibited under their authority from waiving any condition in any of its said policies of insurance contained; either orally or by writing, and were restricted from altering, modifying or discharging any contract or waiving any forfeitures, or charging any terms, rates, or conditions of said company, or receiving any moneys due or to become due to said company, except all policies and renewal receipts signed by an officer of the company sent to said agent for collection, and that the said Jackson Riddle and the beneficiaries in this policy were duly notified by a notice thereon printed
11 in conspicuous letters to that effect and of the limit of the authority of said agents.

Wherefore, having fully answered all the allegations in plaintiff'

amended petition contained, the said defendant asks to be discharged from further consideration of this case and have its costs this wise expended.

H. E. BARNARD AND L. F. KELLER,
Attorneys' for Defendants.

(Endorsed:) No. 2021. In the U. S. cir. c't. district of Kansas. Caroline R. Doster et al., versus the Phœnix Mutual Life Insurance Company. Answer to amended petition. Filed February 20th, 1878, A. S. Thomas, clerk.

And on this day, to wit, April 5, 1878, the plaintiffs, by their attorneys, filed in the clerk's office of said court their reply in said entitled action; which said reply is in the words and figures following, to wit.

Reply.

UNITED STATES OF AMERICA,
District of Kansas:

In the circuit court of the United States for the district of Kansas.

CAROLINE R. DOSTER, MARY J. RIDDLE, Taylor Riddle; Leon H. Riddle, Irma M. Riddle, and Frank Riddle, the three last named minors, who sue by their next friend, Caroline R. Doster, plaintiffs,
vs.
THE PHŒNIX MUTUAL LIFE INSURANCE Company of Hartford, Connecticut, defendant.

12 Come now the plaintiffs above named and for their several replies to the matters and things set forth in the answer of the defendant above named to the amended petition of said plaintiff say:

FIRST REPLY.—They deny each and every allegation in said answer contained, except those which are hereinafter expressly admitted. They admit that the policy of insurance sued upon by them contained the two conditions quoted in defendants answer, and numbered therein second and third, and admit that Jackson Riddle, the holder of said policy of insurance, nor any of the beneficiaries therein named, nor any one for him or them, did not pay to said defendant, nor to any one for it the annual premium of $215.00 due upon said policy, September 20, 1876.

SECOND REPLY.—The said defendant waived the prompt payment of the annual premium of $215.00 due September 20th, 1876, elected not to forfeit the said policy of insurance because of the non-payment thereof on that day and for a good and sufficient consideration agreed to give to the said Jackson Riddle and the said plaintiffs a reasonable time after the 4th of October, 1876, in which to pay said annual premium, and said plaintiff, within a reasonable thereafter, to wit, October 9th, 1876, tendered to said defendant in legal-tender money of the United States the amount of said premium, but it wholly refused to accept the same.

THIRD REPLY.—The said defendant, for a good and sufficient consideration contracted, promised, and agreed to and with said Jackson Riddle and said beneficiaries named in said policy of insurance that

13 it would give to said Jackson Riddle and said beneficiaries notice of the time, place, and amount of payment due as the premium upon said policy for the year 1876 before it would require payment of the same, but it, the said defendant, did not give to said Jackson Riddle or said beneficiaries, or to any one for him or them, said notice of the time, place, and amount of said premium until the 4th day of October, 1876. The said Jackson Riddle and said beneficiaries relied upon said contract, promise and agreement to give said notice, and were ready and willing at all times to pay the said amount, of said premium, and would have done so if said defendant had notified him or them in accordance with its aforesaid contract, promise, and agreement and did immediately upon the receipt of said notice, tender to said defendant in legal tender money of the United States the amount of said premium, but it wholly refused to accept the same.

FOURTH REPLY. The premium due to said defendant from said Jackson Riddle and said beneficiaries upon said policy of insurance for the year 1876, was not the sum of $215.00, as in said policy specified, but by the terms of another certain written contract entered into between said Jackson Riddle and said defendant was a lesser sum, the amount of which was entirely within the knowledge of said defendant and was unknown to the said Jackson Riddle and said beneficiaries and could not be known to him or them until the said defendant had notified and informed him or them of the amount due as and for said premium.

14 Yet the said defendant, well knowing that said Jackson Riddle and said beneficiaries were ignorant of the amount due from them as and for said premium, and well knowing that he and they relied upon it the said defendant, to inform him or them of said amount so due, and well knowing that he and they had no means of ascertaining the said amount so due, except by and through the said defendant, wholly failed, neglected, and refused to notify or inform him or them of said amount so due until the 4th day of October, 1876, at which time it informed him and them of said amount so due, and thereupon said beneficiaries immediately tendered to said defendant said amount, but it wholly refused to accept the same.

The said Jackson Riddle and the said beneficiaries were ready and willing and would have paid said amount so due at any time the said defendant might have notified and informed him or them of said amount, and were always, up to the time of the receipt of the aforesaid notice of October 4th, waiting to be informed by said defendant of said amount in order that they could pay the same.

FIFTH REPLY. The reason that said Jackson Riddle, the holder of the policy of insurance sued upon in this case, nor the beneficiaries named therein did not pay the premium of $215.00, due September 20th, 1876, to said defendant nor to its agent, holding a receipt for the same, is, that such payment was not required of said Jackson Riddle nor of said beneficiaries on said day, and that his and their failure to pay said premium on said day was caused wholly by the acts and doings of said defendant in inducing him and them to believe that payment of

15 said premium upon said day would not be required of him or them—that is to say, that by an uniform course of dealings between said Jackson Riddle and said defendant, and known to the beneficiaries named in said policy of insurance, the said Jackson Riddle was accustomed to pay, & said defendants was accustomed to receive, the annual premium due upon said policy of insurance unconditionally and without any terms whatever, long after the 20th day of

September, the day on which by the terms of said policy they became due.

It was also the uniform custom of said defendant, and known to said Jackson Riddle and said beneficiaries to be such, to accept from all policy holders in said defendant's company payment of their premium long after they became due, without any terms and conditions whatever.

The agent of the defendant at Monticello, Illinois, through whom the said Jackson Riddle effected the said insurance upon his life, stated to the said Jackson Riddle that it would make no difference about the payment of the annual premiums on the day of payment specified in said policy; that it would be satisfactory to said defendant if said premiums were paid to him in time to remit them to the defendant in his report, returns, and remittances for the month of October next ensuing.

Said Jackson Riddle and said beneficiaries, by reason of the aforementioned facts, relied upon said statements and a continuance of said course of dealing by said defendant to accept said premiums after they became due, and made payment of the said premium due upon said policy to the aforementioned agent of said defendant, at Montecello, Illinois, and to the general agent of said defendant, at Chicago,
16 Illinois, after the said 20th day of September in each and every year. After the execution of said policy of insurance, without any terms or conditions whatever, or any objections whatever by said agents of said defendant, and said agents always manifested themselves ready and willing to receive payment of said premiums without any terms or objections whatever.

That the annual premium upon said policy of insurance, due September 20th, 1872, was not paid to said defendant until some time in the month of October, 1872, at which time it was paid to the aforesaid agent of defendant, at Montecello, Illinois.

That the annual premium upon said policy of insurance, due September 20th, 1873, was not paid to said defendant until September 30th, 1873, at which time it was paid to the aforesaid agent of said defendant, at Montecello, Illinois.

That the annual premium upon said policy of insurance, due September 20th, 1874, was not paid to said defendant until some time in the month of October, 1874, at which time it was paid to the aforesaid agent of said defendant, at Montecello, Illinois.

That the annual premium upon said policy of insurance, due September 20th, 1875, was not paid to said defendant until Oct. 9th, 1875, at which time *he* was paid to the aforesaid general agent of said defendant, at Chicago, Illinois.

That said defendant knew of the aforementioned habit and course of dealing between its aforesaid agents and said Jackson Riddle, and in no manner objected thereto or dissented therefrom, but on the contrary ratified and confirmed the said acts and conduct
17 of its said agents, and with a full knowledge of all the aforesaid facts, accepted said premiums, so as aforesaid paid by said Jackson Riddle, without any objections, terms, or conditions whatever, and has ever since retained the said several premiums.

The said defendant knew that said Jackson Riddle and the beneficiaries in said policy of insurance relied upon a continuance of the aforesaid habits and course of dealing, and knew that said Jackson Riddle and said beneficiaries had been, by the aforesaid habit and course of dealing, led to believe that its aforesaid agent had full power and authority to accept premiums from him after they became due, and

knew that said Jackson Riddle and said beneficiaries had been, by aforesaid habit and course of dealing, led to believe that said defendant would not forfeit said policy of insurance because of non-payment of said premiums at the time they became due, and knew that said Jackson Riddle and said beneficiaries had been, by the aforesaid habit and course of dealing, led to believe that it, the said defendant, did not regard the time for the payment of premiums specified in said policy as material or of the essence of the said contract between it and them, and knew that said Jackson Riddle and said beneficiaries had been, by the aforesaid habit and course of dealing, led to believe that the *the* time for the payment of said premium would be extended for a reasonable period after the 20th day of September.

Yet the said defendant, well knowing that its aforesaid habit and course of dealing had led said Jackson Riddle and said bene-
18 ficiaries to rely upon a continuance of the same, and had induced the several beliefs aforesaid, did not correct the said beliefs of said Jackson Riddle and said beneficiaries, and inform him or them to the contrary, but permitted and induced him and them to entertain and rely upon the same. The said defendant did not itself regard said time of payment specified in said policy of insurance as material or of the essence of said contract, but considered itself bound and obligated by the aforesaid habit and course of dealing to accept of said premiums from said Jackson Riddle, or said beneficiaries in said policy, after the time at which, by the terms of said policy, they became due, if paid by him or them within a reasonable time thereafter, and considered itself bound and obligated not to forfeit said policy because of a failure by him or them to pay said premiums at the time they became due, and considered itself bound and obligated to extend the time of payment of said premiums from the said 20th day of September for a reasonable time thereafter.

In addition to said policy of insurance, there was a further contract between said defendant and said Jackson Riddle and the beneficiaries named in the said policy, made prior to the issuance of said policy, and modifying and construing its terms, and in accordance with which said contract said policy was issued, which said contract is in writing, and is a part of and contained in the said Jackson Riddle' application to said defendant for the policy sued upon in this action, in which said contract it was agreed by said defendant that the amount of the
19 premium due upon said policy and to be paid annually to said defendant was not and should not be the sum of $215.00, but was and should be a lesser sum, that is to say, that the said Jackson Riddle and said beneficiaries in said policy should share in the yearly profits of said defendant, arising from its business as a life insurance company, and that at the time for the paymgnt of the several premiums due upon said policy it would credit the said Jackson Riddle and said beneficiaries with whatever of the said profits he and they were entitled under said contract, and deduct the same for the said sum of $215.00, specified in said policy as the annual premium, and the balance remaining after said deduction only was and should be the amount of said premium to be paid by him or them.

The amount of money due in cash from said Jackson Riddle and said beneficiaries upon any premium due upon said policy was entirely within the knowledge of said defendant, and was not and could not be known by said Jackson Riddle nor said beneficiaries until informed and notified by said defendant.

It was the uniform and invariable custom and habit of said defendant

to notify the said Jackson Riddle, by mail, several days before the 20th day of September, of the time when the premium for the year next ensuing would be due, the amount of profits due to him and said beneficiaries under and by virtue of the contract aforesaid, and the balance, after deducting the said profits, which he or they were to pay in cash, and the place at which, and the person to whom said cash could be paid; and it was the uniform and invariable custom and habit
20 of said defendant to notify by mail all persons holding policies of the same kind as that held by said Jackson Riddle, who were, under their said policies, entitled to share in the profits of said defendant as a life insurance company, of the time of payment, the amount of profits to which said persons were entitled, the amount of cash to be paid, and the place at which, and the person to whom said payment could be made, which said custom and habit of said defendant, in its said dealings with said persons, was well known to said Jackson Riddle and said beneficiaries.

The said defendant, during all the time of the continuation of the policy of insurance sued upon in this action, never required payment of the cash portion of said premiums of $215.00 at the office of the said defendant in the city of Hartford, Connecticut, and never notified said Jackson Riddle nor said beneficiaries that he or they must pay the same to it at said office in said city of Hartford, but always and invariably, in its notices of the time, place, and amount of said payments, instructed him to make said payments to its agents at Montecello, Illinois, or Chicago, Illinois, and never required him to make payment of said premiums, or any portion thereof, until notified by it of the time of payment, place of payment, amount of payment, and persons to whom payment must be made. The said defendant, in all its dealings with persons holding policies from said defendant of the same kind as that held by said Jackson Riddle, who were entitled to share in the profits of said defendant as a life insurance company, never required pay-
21 ment of the cash portions of said premiums due from said persons at its office in the city of Hartford, Connecticut, although, by the terms of their said policies, payment was provided for at said place, and never notified said persons, nor any of them, that they must pay the same to it at said place, but always and invariably, in its notices of the time, place, and amount of payment due from said persons, instructed them to make said payments to its agents, and never required them to make payment of said premiums, or any portion thereof, until notified by it of the time of payment, amount of payment, place of payment, and person to whom payment must be made, which said habit, custom, and course of dealing with said persons was known to said Jackson Riddle and said beneficiaries.

The said defendant elected not to require payment from said Jackson Riddle, nor said beneficiaries, of the cash portion of any of the premiums due upon said policy of insurance, at its office, in the city of Hartford, Connecticut, and elected not to require payment of said cash portion of said premiums until it had notified said Jackson Riddle, by mail, of the time of payment, place of payment, amount of payment, and the person to whom payment could be made.

The said defendant considered itself bound and obligated to said Jackson Riddle and said beneficiaries to give to them notice, by mail, of the time and place of payment of said premiums due upon said policy, the amount thereof, and the person to whom payment must be
22 made, and considered itself bound and obligated not to forfeit said policy for non-payment of a premium due thereon until it

had given said Jackson Riddle and said beneficiaries due notice, by mail of said time, place, and amount of payment, and the person to whom said payment must be made.

The said Jackson Riddle and said beneficiaries in said policy of insurance, by reason of the aforesaid habit, custom, and course of dealing between said defendant and themselves, and between it and the other said persons hereinbefore mentioned, relied upon a continuance of its said habit, custom, and course of dealing in notifying said Jackson Riddle of the time, place, and amount of payment of said premiums, and the person to whom said payment must be made, and believed that said defendant did not itself regard the stipulation in said policy, as to the time and place of payment of premiums, as material or of the essence thereof, until the said Jackson Riddle had been notified by it, by mail, of the time, place, and amount of payment, and the person to whom payment could be made, and believed that the defendant would not seek to forfeit or annul said policy of insurance until the said Jackson Riddle had been notified by mail as aforesaid and a reasonable time thereafter had elapsed for him or said beneficiaries to make payment of the cash portion of said premiums, and believed that said defendant considered itself bound by its aforesaid custom of giving said notice.

23 The defendant, well knowing that its aforesaid habit, custom, and course of dealing with said Jackson Riddle and said beneficiaries and the other aforementioned persons as to the notification aforesaid, had induced him and them, the said beneficiaries, to believe as aforesaid alleged, and that he and they relied upon a continuance thereof as to said notification; but it, the said defendant, in no wise corrected said belief or informed said Jackson Riddle or said beneficiaries in anywise to the contrary, but permitted and induced him and them to continue in the same.

On the 20th day of September, 1876, for a long time prior thereto and up to the day of his death, as alleged in the said plaintiffs' amended petition, the said Jackson Riddle resided at the town of Oxford, Benton County, Indiana, and his post-office address during all of said time was the said town of Oxford, of which facts the said defendant was well informed.

The cash portion of premium due September 20th, 1876, upon said policy of insurance was not $215.00, but was only $165.40, as said plaintiffs have since been informed by said defendant.

The said defendant did not, previous to the 20th day of September, 1876, nor at any time thereafter, notify the said Jackson Riddle, nor any of said beneficiaries, nor any one for him or them, of the time, amount, and place of payment of the cash portion of premium due for that year or the person to whom the same must be paid, but wholly failed and neglected to so notify him or them or any one for him or them.

The said Jackson Riddle and said beneficiaries, during all the time aforesaid, were ignorant of the cash amount of premium due for that year upon said policy, and had no means of knowing the same

24 until notified of the amount thereof by said defendant, as it had been theretofore accustomed to do, and relying upon the previous habit, custom, and course of dealing with said defendant and its agents as to the acceptance of payment of past-due premiums from said Jackson Riddle and others, and the habit, custom, and course of dealing by it with said Jackson Riddle and others as to the aforesaid notification, and upon the several beliefs hereinbefore mentioned which said defendant had permitted and induced them to form and rely upon;

and because neither he nor said beneficiaries knew the amount required in cash to make said payment, and had not been notified thereof, as said defendant was in duty bound to do, he and they failed to pay said premium due upon said 20th day of September, 1876; but he and they were waiting to receive from said defendant its notification aforesaid, intending upon the receipt thereof to remit the amount claimed therein to said defendant or its agents, as it might direct, and as said Jackson Riddle had made arrangements to do and intended and was willing to do and had given special directions to have done.

On the 4th day of October, 1876, the said defendant mailed to said Jackson Riddle a letter of that date, addressed to him at Fowler, Indiana, which was not his post-office address, which defendant at the time well knew, notifying him of the cash amount of premium for that year due upon said policy, requesting him to pay the same, and stating that it would receive the same as such payment if made within a reasonable time thereafter, which said letter was not received by said Jack-
25 son Riddle, but was received and opened and read by the beneficiaries in said policy of insurance, and the offer, proposition, and agreement therein made was accepted in the lifetime of said Jackson Riddle.

On the 9th day of October, 1876, the said defendant was asked by the said beneficiaries if it would accept payment of the premium upon said policy of insurance, due September 20th, 1876, in accordance with its aforesaid letter of October 4th, 1876; and the said defendant replied that it would, and made no objections and attached no terms or conditions to its said promise of acceptance, whereupon and afterwards said beneficiaries informed said defendant that said Jackson Riddle was dead.

On the 9th day of October, 1876, immediately after the occur*ance* of the matters and things in the next proceeding paragraph alleged, the said beneficiaries tendered to said defendant the amount theretofore claimed by it as due for said premium of the year 1876 upon said policy in legal-tender money of the United States, and it refused to accept the same. Wherefore said plaintiffs pray for judgment in accordance with their amended petition.

FRANK DOSTER &
RUGGLES, SCOTT & LYNN,
Attorneys for Plaintiff.

(Endorsed:) 2012. Caroline R. Doster vs. Phœnix Mutual Life Insurance Co., of Hartfort, Connecticut. Reply. Filed April 5, 1878. A. S. Thomas, clerk. Frank Doster, Ruggles, Scott & Lynn, att'y' for pl'ff.

And on this day, to wit, Nov. 25, 1878, the plaintiffs, by their
26 attorneys, filed in the clerk's office of said court their 4 demands for production of documents in said entitled action; which said 4 demands for production of documents are in the words and figures following, to wit:

Demand for production of documents.

UNITED STATES OF AMERICA,
District of Kansas:

In the circuit court of the United States for said district.

CAROLINE R. DOSTER, MARY J. RIDDLE, Taylor Riddle; Leon H. Riddle, Irma M. Riddle, and Frank Riddle, the three last named being minors, who sue by their next friend, Caroline R. Doster, plaintiff,
vs.
THE PHŒNIX MUTUAL LIFE INSURANCE COMpany, of Hartford, Connecticut.

To the above-named defendant and your attorney of record:

You are hereby notified to have and produce upon the trial of the above-entitled cause, at the next ensuing term of the court aforesaid, the original of the letter herein described, so that the plaintiff may read the same in evidence on said trial, to wit, the letter written to the said defendant by Frank Doster, of Marion Center, Kansas, on or about July 19, 1877, in which said Frank Doster represents himself to be the attorney for beneficiaries in their claim on policy No. 56960, on life of Jackson Riddle, and requests an adjustment of the matter in dispute between said beneficiaries and said defendant.

Dated November 15th, 1878.

FRANK DOSTER,
27 *Att'y for Plaintiffs.*

UNITED STATES OF AMERICA,
District of Connecticut:

HARTFORD, *November 18th*, 1878.

Then and there I left with and in the hands of John M. Holcombe, the secretary of the within-named insurance company, a true and attested copy of the within notice.

EDWARD S. WHITE,
Indifferent Person.

Subscribed & sworn to before me at Hartford, C't, this 18th day of November, 1878.

[SEAL.] EDWARD B. BENNETT,
Notary Public.

(Endorsed:) No. 2012. Caroline R. Doster et al., pl'ff, vs. The Phœnix Mutual Life Ins. Co., Hartford, Conn., def't. Demands for production of documents. Filed Nov. 25, 1878. A. S. Thomas, clerk, by J. U. Strickler, deputy.

Demand for production of documents.

UNITED STATES OF AMERICA:

In circuit court for district of Kansas.

CAROLINE R. DOSTER, MARY J. RIDDLE, Taylor Riddle; Leon H. Riddle, Irma M. Riddle, and Frank Riddle, the three last named being minors, who sue by their next friend, Caroline R. Doster, plaintiffs,
vs.
THE PHŒNIX MUTUAL LIFE INSURANCE COMPANY, of Hartford, Conn., defendant.

To the above-named defendant and your attorney of record:

You are hereby notified to have and produce upon the trial of the above-entitled cause, at the next ensuing term of the court aforesaid, the originals of the letters, books, and papers herein described,
28 so that plaintiffs may read the same in evidence on said trial:
The registers of renewals kept by H. H. Koon, general agent of Phœnix Mutual Life Insurance Company, of Hartford, Conn., at Chicago, Illinois, and by A. G. Fowler, superintendent of agencies, at Chicago Ill., for the years 1872, 1873, 1874, 1875, and 1876; the application of Jackson Riddle, made at Montecello, Ill's, through W. G. Herron, agent of the Phœnix Mutual Life Insurance Company, of Hartford, Conn., for life insurance in said company, and on which said application there was issued to said Jackson Riddle life policy No. 56960; the four premium notes given by said Jackson Riddle to said company, in part payment of his premiums on said policy under the half-note plan; the letter written to A. G. Fowler, superintendent of agencies of said company, at Chicago, Ill's, in the month of September or October, 1875, by W. G. Herron, of Montecello, Ill's, in which said letter was enclosed draft of $165.41 in payment of Jackson Riddle's premium on his policy No. 56960, due Sept. 20th, 1875, and in which letter Mr. Fowler was notified by Mr. Herron that said Jackson Riddle had removed from Montecello, Ill's, to Oxford, Indiana, May 18th, 1878.

FRANK DOSTER,
Attorney for Plaintiffs.

STATE OF CONNECTICUT,
County of Hartford:

HARTFORD, *May 24th*, 1878.

I hereby acknowledge that service of the foregoing notice and demand was made on me by delivery of a true copy thereof this 24th day of May, A. D. 1875.

29 J. M. HOLCOMBE, *Sec'y.*

It is agreed that this demand shall be good for the present Nov. term, and the originals need not be produced, but that the copies as attached to depositions now as file may be used with or without the depositions to which they are attached, and such presentation of said

copies shall be in full compliance with this demand and notice on part of defendant and plaintiffs, Nov. 28, 1878.

FRANK DOSTER, *Att'y for Plaintiff.*
H. E. BERNARD, *Att'y for Defendant.*

(Endorsed:) No. 2012. Caroline R. Doster et al. vs. Phœnix Mutual Life Insurance Company. Demand for production of books and papers. Filed Nov. 25, 1878. A. S. Thomas, clerk, by J. U. Strickler, deputy.

Demand for production of documents.

In the circuit court of the United States for the district of Kansas.

CAROLINE R. DOSTER, MARY J. RIDDLE, Taylor Riddle; Leon H. Riddle, Irma M. Riddle, and Frank Riddle, the three last named minors, who sue by their next friend, Caroline R. Doster, plaintiffs,
vs.
THE PHŒNIX MUTUAL LIFE INSURANCE Company, of Hartford, Conn., defendant.

To. A. G. Fowler, superintendent of western agencies of above-named defendants:

You are hereby notified to have and produce upon the trial of the above-entitled cause, at the next ensuing term of the court aforesaid, the originals of the following, so that said plaintiffs may
30 read the same on the trial of said case, to wit, the affidavits of W. S. Vannatta, made Oct. 16, 1876, before John B. Sherwood, notary public, Tippecanoe County, Indiana; Abram P. Carnahan, made Oct. 17, 1876, before H. W. Chase, notary public, Tippecanoe County, Indiana; W W. Vennedga, made Oct. 28th, 1876, before John B. Sherwood, notary public, Tippecanoe County, Indiana; and Joseph Cuppy, made Oct. 17th, 1876, before H. W. Chase, notary public, Tippecanoe County, Indiana, the said affidavits being made by said persons in proof of the death of Jackson Riddle, Oct. 6, 1876, which said Jackson Riddle was insured by life policy No. 56960, in the Phoenix Mutual Life Insurance Company of Hartford, Conn., date Sept. 20, 1871, and which said affidavits are forwarded to you as agent of said insurance company at Chicago, Illinois, on or about Oct. 28th, 1876, from Lafayette, Indiana, by letter of that date, from Mess. Chase and Chase, attorneys at law, of Lafayette, Indiana.

FRANK DOSTER.
Attorney for Pl'ff's.

UNITED STATES OF AMERICA,
Northern Dist. of Illinois,
State of Illinois, County of Cook:

I, Norman Hall, do solemnly swear that on the eighteenth day of November, A. D. 1878, I served the within notice on the said A. G. Fowler, by reading the said notice to him, and delivering to him a true copy of the same.

NORMAN HALL.

31 Subscribed and sworn to before me this 18th day of November, A. D. 1878.

PHILLIP A. HOYNE,
[SEAL.] *U. S. Commissioner, N. D. Ill.*

(Endorsed:) "No. 2012. Caroline R. Doster et al. vs. The Phœnix Mutual Life Insurance Company, of Hartford, Conn. Demand for production of documents. Copy of within notice this day received, Nov. 18, '78, A. G. Fowler. Filed Nov. 25, 1878. A. S. Thomas, clerk, by J. U. Strickler, deputy.

Demand for production of documents.

In the circuit court of the United States for the district of Kansas.

CAROLINE R. DOSTER, MARY J. RIDDLE, Taylor Riddle; Leon H. Riddle, Irma M. Riddle, and Frank Riddle, the three last named minors, who sue by their next friend, Caroline R. Doster, plaintiffs,
vs.
THE PHŒNIX MUTUAL LIFE INSURANCE Company, of Hartford, Conn., defendant.

To the above-named defendant and your attorney of record:

You are hereby notified to have and produce upon the trial of the above-entitled cause, at the next ensuing term of the court aforesaid, the originals of the following, so that said plaintiffs may read the same on the trial of said case, to wit, the affidavit of W. S. Vanatta, made October 16th, 1876, before John B. Sherwood, notary public, Tippecanoe County, Indiana; Abram P. Carnahan, made October 17th, 1871, H. W. Chase, notary public, Tippecanoe County, Indiana; W. W. Vinnedge, made October 28, 1876, before John B. Sherwood,
32 notary public, Tippecanoe County, Indiana, and Joseph Cuppy, made October 17, 1876, before H. W. Chase, notary public, Tippecanoe County, Indiana.

The said affidavits being made by said persons in proof of the death of Jackson Riddle, October 6th, 1876, which said Jackson Riddle was insured by life policy No. 56960, in the Phœnix Mutual Life Insurance Company, of Hartford, Connecticut, date Sept. 20, 1871, and which said affidavits were forwarded to your agent at Chicago, Ill's, on or about October 28, 1876, from Lafayette, Indiana, by letter of that date, from Mess. Chase & Chase, attorneys at law, of Lafayette, Indiana.

FRANK DOSTER,
Attorney for Plaintiffs.

UNITED STATES OF AMERICA,
District of Connecticut:

HARTFORD, *November* 18, 1878.

Then and there I left with and in the hands of John M. Holcombe, the secretary of the within-named insurance company, a true and attested copy of the within notice.

E. S. WHITE,
Indifferent Person.

Subscribed and sworn to before me at Hartford this 18th day of November, 1878.

[SEAL.] EDWARD B. BENNETT,
Notary Public.

(Endorsed:) No. 2012. Caroline R. Doster et al. vs. The Phœnix Mutual Life Insurance Company, of Hartford, Conn. Demand for production of documents. Filed Nov. 25, 1878. A. S. Thomas, clerk, by J. U. Strickler, deputy.

33 And on this day; to wit, Nov. 27, 1878, the defendant by its attorney filed in the clerk's office of said court a notice to *to* produce papers in said entitled action; which said notice is in the words and figures following, to wit:

Notice to produce papers.

In the circuit court of the United States for the district of Kansas.

CAROLINE R. DOSTER, MARY J. RIDDLE, TAYLOR RIDDLE; and LEON H. RIDDLE, age 13 years, Irma M. Riddle, age 9 years, and Frank Riddle, age 5 years, minors, who sue by their next friend, Caroline R. Doster, plaintiffs, *vs.* THE PHŒNIX MUTUAL LIFE INSURANCE COMPANY, of Hartford, Connecticut, defendant.	Notice to produce papers.

To the above-named plaintiffs and your attorneys of record:

You will take notice that the defendant demands and requires you to produce on the trial of this cause, that the same may be introduced in evidence by the defendant, the following papers, to wit:

A written and printed notice mailed by defendant's agent to Jackson Riddle, at Monticello, Illinois, from the post-office at Chicago, Illinois, on or about August 25th, 1876, and which said notice advised and notified Jackson Riddle of the time when and amount due as the premium upon a certain policy of insurance upon his life in the *different*
34 company, which notice stated that the premium on said policy would be due and payable on the 20th day of September, 1876, and that the amount of said premium was $165.41.

Also another certain written & printed notice mailed from the post-office at Chicago, Illinois, by defendant's agent to Jackson Riddle, at Fowler, Indiana, on or about the 7th day of September, 1876, advising and notifying him of the time when and the amount due from him to defendant company, which said notice stated that the premium on said policy was due on September 20th, 1876, and that the amount was $165.41, and that unless the above notices are produced as requested, the defendant will offer, upon the trial of this cause, evidence to prove the contents and reception of both of the same.

H. E. BERNARD,
Att'y for Defendant.

STATE OF KANSAS,
County of Shawnee, ss:

I, H. E. Bernard, a citizen & resident of Missouri, on oath, state that I am one of the attorneys of record in the above case, and that I served upon Frank Doster, one of the attorneys of record for the plaintiffs in the above-entitled case, a notice, of which the above is a true copy, on this 26th day of November, 1878, by delivering said notice to him in person in the city of Topeka, Shawnee County, State of Kansas.

H. E. BERNARD.

Subscribed to in my presence and sworn to before me this 26th day of November, 1876.

35 [SEAL.] HOWEL JONES,
Notary Public.

(Endorsed:) #2012. Caroline R. Doster et al. vs. The Phœnix Mutual Life Insurance Company. Notice to produce papers. Filed Nov. 27, 1878. A. S. Thomas, clerk, by J. U. Strickler, deputy.

And on this day, to wit, Dec. 4, 1878, at the November term, 1878, of said court, in the record of the proceeding thereof in said entitled suit, are the following entries, to wit:

Journal entry.

WEDNESDAY, *Dec.* 4, 1878.

CAROLINE R. DOSTER, MARY J. RIDDLE, Taylor Riddle; and Leon H. Riddle, age 13 years, Irma M. Riddle, age 9 years, and Frank Riddle, age 5 years, minors, who sue by their next friend, Caroline R. Doster, plaintiff,
vs.
THE PHŒNIX MUTUAL LIFE INSURANCE COMpany, of Hartford, Connecticut, defendant. } 2012.

Now come the plaintiffs herein, by Frank Doster and Ruggles, Scott & Linn, their attorneys, and the defendant, by H. E. Bernard, its attorney, and to try the issues joined come a jury, to wit, J. B. Parrott, John T. Lanter, J. P. Hiner, W. T. Roberts, O. D. Skinner, Oscar Tomson, Jas. Childs, C. E. Moore, J. W. Sincock, Thos. Sternberg, E. L. Mitchell, and H. C. Oglesby, twelve good and lawful men of the body of the district of Kansas, who being duly empanneled and sworn
36 to well and truly try the matters submitted to them in this action and a true verdict give, according to the law and evidence, and thereupon the trial of this action is proceeded with, and not being concluded at the time of adjournment, the jurors are admonished by the court as to their duties herein, and the further hearing postponed until to-morrow.

Journal entry.

WEDNESDAY, *Dec.* 4, 1878.

CAROLINE R. DOSTER ET AL.
vs.
PHŒNIX MUTUAL LIFE INS. CO. } 2012.

Now, to wit, on this 4th day of December, 1878, the defendant mo'es the court for an order on plaintiffs to require them to produce on trial of said cause, and deposit with the clerk, the amount of the tender of money alleged in plaintiff pleadings to have been made to defendant, October 9th, 1876, which motion is sustained, and thereupon the said plaintiffs do, in accordance with said order, produce the amount of said tender in court, to wit, the sum of $200.00, and deposit the same with the clerk in legal-tender notes of the U. S. of America.

And on this day, to wit, Friday, Dec. 6th, 1878, at November term, 1878, of said court, in the record of the proceedings thereof in said entitled action is the following entry, to wit:

Journal entry.

FRIDAY, *Dec. 6th*, 1878.

CAROLINE R. DOSTER ET AL.
vs.
PHŒNIX MUTUAL LIFE INSURANCE COMPANY, of Hartford, Connecticut. } 2012.

37 Now come the parties herein same as on yesterday, and the jurors empanelled herein being called and all being present, the trial of this cause is proceeded with, and not being concluded at the hour of adjournment, the jurors are admonished by the court as to their duties herein, and the further hearing postponed until to-morrow.

And on this day, to wit, Saturday, Dec. 7, 1878, at Nov. term, 1878, of said court, in the record of the proceedings thereof in said entitled action is the following entry, to wit:

Journal entry.

SATURDAY, *December* 7, 1878.

CAROLINE R. DOSTER, MARY J. RIDDLE, TAYlor Riddle; Leon H. Riddle, Irma M. Riddle, and Frank Riddle, the three last named minors, who sue by their next friend, Caroline R. Doster,
vs.
THE PHŒNIX MUTUAL LIFE INSURANCE Company, of Hartford, Connecticut. } 2012.

Now come the parties herein same as on yesterday, and the jurors empan*n*eled herein being called and all being present, the trial of this cause is proceeded with, and the jury having heard the evidence, arguments of counsel, and instructions of the court, retire under charge of a sworn bailiff for deliberation, and afterwards come into open court and render their verdict herein in the words and figures following, to wit:

38 Circuit court of the United States for the district of Kansas.

CAROLINE R. DOSTER, MARY J. RIDDLE, TAYlor Riddle; Leon H. Riddle, Irma M. Riddle, & Frank Riddle, the three last named minors, who sue by their next friend, Caroline R. Doster,
vs.
THE PHŒNIX MUTUAL LIFE INSURANCE Company, of Hartford, Connecticut. } No. 2012.

"We, the jury in the said above-entitled action, find for the plaintiffs

and assess their damages against the defendant herein at the sum of five thousand seventy-seven & $\frac{6}{100}$ dollars ($5,077.06).

"T. J. STERNBERGH,
"*Foreman.*"

And thereupon the defendant herein gave notice of motion for a new trial of this action.

And on this day, to wit, Dec. 12, 1878, the defendant, by its attorney, filed in the clerk's office of said court its motion for a new trial in said entitled action, which said motion is in the words and figures following, to wit:

Motion for a new trial.

In the circuit court of the United States for the district of Kansas.

CAROLINE R. DOSTER, MARY J. RIDDLE, TAYlor Riddle; Leon H. Riddle, and Irma M. Riddle, and Frank, the three last minors, who sue by their next friend, Caroline R. Doster, *versus* THE PHŒNIX MUTUAL LIFE INSURANCE COMpany, of Hartford, Connecticut.	Motion to set aside the verdict and grant a new trial.

39 Comes now the defendant and moves the court to set aside the verdict of the jury and grant it a new trial in this cause for the following reasons:

1st. Because the court allowed the plaintiff to read to the jury incompetent and irrelevant testimony after the objection of the defendant then and there made thereto.

2nd. Because the court refused to charge the jury in this case as requested by the defendant to do, although the requested charge contained properly and fully the law governing this cause.

3rd. Because the court gave in his charge to the jury in this cause matters not competent and not justified by the evidence before the jury in this cause, and which was not the law in this case, under the objection of the defendant.

4th. Because the jury's verdict in this case is against the evidence in this case.

5th. Because there was no evidence in this case upon which the jury could properly find their verdict rendered herein.

6th. Because the court in refusing to charge the jury as requested by the defendant, and gave an improper charge to the jury upon his own motion.

H. E. BERNARD,
Attorney for Defendant.

(Endorsed:) No. 2012. In the circuit court of U. S., district of Kansas. Caroline R. Doster et al. vs. Phœnix Mutual Life Insurance
40 Company. Motion for a new trial. Filed Dec. 12, 1878. A. D. Thomas, clerk.

And on this day, to wit, Saturday, December 14th, 1878, at November term, 1878, of said court, in the record of the proceeding thereof in said entitled action is the following entry, to wit:

Judgment.

SATURDAY, *December* 14*th*, 1878.

CAROLINE R. DOSTER, MARY J. RIDDLE, Taylor Riddle; Leon H. Riddle, Irma M. Riddle, & Frank Riddle, the three last named minors, who sue by their next friend, Caroline R. Doster, plaintiffs,
vs.
THE PHŒNIX MUTUAL LIFE INSURANCE COMPANY, of Hartford, Connecticut, defendants. } 2012.

Now on this 14th day of December, 1878, on motion of plaintiff offering to remit $175.00 of the verdict found by the jury on the trial of this cause in favor of the plaintiffs, the same being amount of cash premium alleged to have been due September 20, 1876, and tendered to defendant Oct. 9, 1876, and the plaintiffs appearing by their counsel, Frank Doster & Mess. Scott & Lynn, and the defendant appearing by its counsel, H. E. Bernard, the argument of counsel being heard, and the court being fully advised in the premises, orders that the motion and offer be denied, and it is hereby ordered that the offer be denied and the motion overruled.

To the order of the court in overruling said motion the plaintiff then and there excepted.

41 And on the same day the motion of defendant to set aside the verdict and grant a new trial coming on by agreement, the defendant appearing by its counsel, H. E. Barnard, and the plaintiffs by their counsel, Frank Doster & Mess. Scott & Lynn, the argument of counsel being heard, and the court being fully advised, orders that the motion be overruled, and it is hereby ordered that said motions of the defendant to set aside the verdict rendered in this cause and to grant the defendant a new trial be, and the same is hereby, overruled.

To the order of the court in overruling said motion the defendant then & there excepted.

It is therefore now by the court here considered, ordered, and adjudged that Caroline R. Doster, Mary J. Riddle, Taylor Riddle; Leon H. Riddle, Irma M. Riddle, and Frank Riddle, the three last named minors, who sue by their next friend Caroline R. Doster, the plaintiffs herein, have and recover of and from the Phœnix Mutual Life Insurance Company, of Hartford, Connecticut, the defendant herein, the sum of five thousand seventy-seven and 6 cents, and also their costs in this action expended, and that execution issue therefor.

And by agreement of counsel for the plaintiffs and defendant, it is ordered that the defendant have leave to file its supersedeas bond within ten days, and that defendant, by agreement of parties, have leave to file its bill of exception, its assignment of errors, its prayer for reversal, and its citation and writ of error, on or before the second Monday in March, 1879, and the plaintiff have the like time to do same on
42 the overruling of their motion aforesaid.

And on this day, to wit, March 3rd, 1879, the defendant, by its attorney, filed in the clerk's office of said court its bill of exceptions in said entitled action, which said bill of exception is in the words and figures following, to wit:

43 In the circuit court of the United States within and for the district of Kansas, at the November term, 1878.

CAROLINE R. DOSTER, MARY J. RIDDLE, Taylor Riddle; and Leon H. Riddle, age 13 years; Irma M. Riddle, age 9 years; Frank Riddle, age 5 years, minors; who sue by their next friend, Caroline R. Doster, pl'ffs,
versus
THE PHŒNIX MUTUAL LIFE INSURANCE Company, of Hartford, Connecticut, def'ts.

Bill of exceptions.

Be it remembered that this above-entitled cause came on for trial on the 3rd day of December, 1878, before the honorable circuit court of the United States of America, within and for the district of Kansas, being then in session at Topeka, in said district, and the following things and proceedings were had and done in the trial thereof, to wit:

A jury was empanelled and sworn to try the cause, and the plaintiff' read their amended petition; the defendant its answer to plaintiffs' amended petition; and plaintiffs' their reply to defendant's answer to plaintiffs' amended petition.

The defendant moved the court to order plaintiffs to make their tender good by depositing the amount tendered in the court, which was ordered accordingly, and plaintiffs deposited the amount of the tender in court.

44 Plaintiffs then offered in evidence the following testimony in support of the issues made in their pleading, to wit:

1st. The plaintiffs offered in evidence the second deposition of WM. G. HERRON, which is as follows in substance:

My name is Wm. G. Herron; my age, 49 years; occupation, mer chant, and place of residence, Monticello, Piatt County, Illinois.

Ques. State what relation you sustained to the Phœnix Mutual Life Insurance Company, of Hartford, Connecticut, during the months of September and October, 1875.

Ans. I do not think I sustained any relation during those months.

Ques. What relation, if any, had you sustained to that company previous to that time?

(OBJ.—Counsel for defendant objects on the ground that his relationship with the company is evidenced by written contract. Objection overruled by court and defendant then and there excepted.)

Ans. I had been local agent up to March previous.

Ques. State if, previous to that time, you had received any premiums from Jackson Riddle for the company while you were their agent.

Ans. Yes, sir.

Ques. What time did Jackson Riddle leave this county and where did he move to?

Ans. My impression is he left in March or April or spring of 1875, & moved to Oxford, Ind.

Ques. State if he sent back any premiums to you from Oxford, Ind., for the company; and, if so, when was it?

(OBJ.—Objected to by def't's counsel, because witness was not agent of company at that time, and nothing done by him could bind def't.

45 Objection overruled by court, to which ruling defendant then and there excepted.)

Ans. I received a draft and sent it to the company; it was for the renewal of his premium for that year; I received it in September.

Ques. In sending that draft to the company, did you write any letter?

Ans. I did.

Ques. Have you a copy of that letter?

Ans. I have not.

Ques. State whether you informed the company or its agent of the residence of Jackson Riddle.

(OBJ.—Objected to by def't' counsel because it is leading, and calling for secondary evidence. Objection overruled by the court; to which ruling defendant then and there excepted.)

Ans. I informed the company to send his receipt to Oxford, Ind.; that he lived there, and to communicate with him there.

Ques. State fully the contents of that letter.

(OBJ.—Objected to because it callsfor secondary evidence. Objection overruled by court, and def't then & there excepted.)

Ans. I wrote, I think, that he lived at Oxford, Indiana, and for them to communicate with him there.

Ques. State if you wrote that in the letter you sent the draft in the first time.

Ans. I think I did; yes, sir.

Ques. Give the date of that letter as near as you can?

Ans. I can't state positively, but I think it was in the last days of September, 1875.

Ques. State if that draft was returned to you, and if, for what purpose.

Ans. Yes, sir; asking me to endorse it.

46 Ques. What did you do with it then?

Ans. I endorsed and returned it to the company.

Ques. About what time was that?

Ans. I do not know. It might have been the last days of September, or the first days of October; I have no recollection of the dates about the matter.

Ques. State if you gave any direction in the second letter where to send the receipt.

(OBJ.—Objected to by def't's counsel as secondary evidence; objection overruled; to the ruling of the court the def't then and there excepted.)

Ans. I don't think I did, that is my impression now.

Cross-examination:

Ques. You have testified fully heretofore in this case about all the matters you have been interrogated upon this morning, have you not?

Ans. I think so.

Ques. Your former relationship with the def't company was a matter of written contract, was it not, and that contract was introduced in evidence of pl'ff's at their former taking of your deposition in the case, was it not?

Ans. I think it was in writing, and was introduced.

Ques. You never had any other agency or authority from the company than that shown in that contract, had you?

Ans. I think not.

Ques. Did you not tell Jackson Riddle before he left Monticello, that you were no longer an agent of the company, and he must look promptly to the payment to the company himself?

Ans. I think I did, or words to that effect.

Ques. In the taking of your former deposition, I made an
47 exhibit of a certain paper written or signed by yourself or both, do you recollect it?

Ans. I recollect of a letter written; I don't think I wrote all the letter but I wrote part of it; I think I signed it.

Ques. Were the statement therein contained true?

Ans. I think in the main it was.

Ques. You were a personal friend of Jackson Riddle's from early boyhood, were you not?

Ans. Yes; more or less; been acquainted with him from boyhood.

Ques. Mr. Riddle could read writing and printing, could he not?

Ans. I think he could.

Ques. You are not sure, are you, which letter to the company inclosing draft spoken of, you indicated Riddle's address in, are you?

Ans. I think the first one.

Plaintiff then read in evidence the first deposition of WM. G. HERRON, who testified therein, in substance, as follows:

I knew Jackson Riddle in his lifetime for about 35 years, both in Ohio and Piatt County, Illinois. I was local agent for the Phœnix Mutual Life Insurance Company at Monticello, Illinois, from May, 1871, to March, 1875. I had a written contract of agency with said company, the instrument was signed by H. H. Koon and myself, and I attach it to my deposition and marked it Exhibit A.

Copy of Exhibit A, attached to Wm. G. Herron's first deposition.

48 Agreement and agent's contract.

This agreement made and entered into this thirty-first day of May, A. D. 1871, by and between The Phœnix Mutual Life Insurance Co., of Hartford, Conn., of the first part, and William G. Herron, of the town of Monticello, county of Piatt, State of Illinois, of the second part, witnesseth: That for and in consideration of the agreement hereafter named, to be kept and performed by the said William G. Herron, of the second part, and the Phœnix Mutual Life Insurance Co., of the first part, do appoint William G. Herron, their lawful agent in the town of Monticello, county of Piatt, State of Illinois, with the privilege of canvassing the town of Monticello and vicinity, and no other, during the term of this contract from the date hereof, on the following terms and conditions, viz:

First. All moneys received by you on account of the company are a fiduciary trust in your hands, and are not to be used for any purpose whatever, but must be remitted by draft to general agent, Chicago, Ills., on the 25th of each month, or on the first of the following month.

Second. To use all reasonable diligence in canvassing the said territory for life insurance, and maintain the reputation of the company.

Third. Not to act as agent for any other life insurance company.

Fourth. To keep a correct list and post-office address of each person applying for life insurance.

Fifth. All policies are issued from the home office of the company, at Hartford. You are authorized to solicit and receive applications for insurance, and to forward them to the office in Chicago, Ill. If accepted, policies will be sent to you as soon as possible.

49 Sixth. On the 25th of each month, and before the first of the following month, you make up your account with the company in the blanks furnished, charging yourself with all premiums and in-

terest collected, and all notes received from the company, and credit yourself with your commissions, the postage, revenue stamps, exchange, medical examinations, and monies and note remittances; and the balance belonging to the company shall be remitted by draft to balance for the month.

Seventh. The account will vouch for the commissions and *and* revenue stamps, but vouchers for all other charges except postage and exchange must be remitted with the account. Return all policies that have been kept in hands sixty days, and all renewal receipts past due. No charge for printing, advertising, stationery, &c., will be allowed.

Eighth. No insurance is binding until the premium has been paid. You are authorized to receive the premium any time after the application is completed; but such payment does not bind the company until the policy is received and delivered.

Ninth. You are authorized to receive renewal premiums not past due, but not to make receipts for the same. All renewal receipts to be valid and binding must issue from the home office and to be signed by an authorized officer and countersigned by the general agent at Chicago, Illinois.

Tenth. If, when the premium is past due and not paid, the policy becomes forfeited in accordance with its terms, but the company may, as an act of grace and courtesy, renew such policies upon the insured furnishing to them at his own expense, examinating
50 physician's certificate, showing that he is still a good risk.

Eleventh. You are not authorized to accept risks of any kind, to make, alter, or discharge contracts, waive forfeitures, or name any extra percentage for special risks, neither are you authorized to credit or remit premiums not actually received; and any agent who advances and remits moneys for persons insured does it upon his own personal and private account.

Twelfth. Should there be no regularly appointed medical examiner in the neighborhood of the agent he will employ for examination some "regular practioner" of good standing, and have him furnish on company's blanks for this purpose prominent facts, such as his age, length and extent of his practice, of what college he graduated, &c.,

Thirteenth. The examiner's fee is from two to three dollars, according to the circumstances, and is always the same whether he recom'ends the candidate or not; but the agent will not recom'end the examination unless he believes the case to be good. When the fees are paid the agent must obtain a receipted bill, stating the name of the person examined, and the date of the examination.

Fourteenth. For and in consideration of the faithful performance of the within contract the parties of the first part agree to pay the party of the second part (20) twenty per cent. commission of the first year's regular premiums on all policies issued through him; (20) & (5) twenty and five per cent. on single premiums for whole life, (5) five per cent. for collecting and remitting renewal premiums on policies issued
51 through him. No commission is allowed on dividends or losses paid.

Fifteenth. No premiums can be collected, and no commission can be claimed by any person whose agency has been discontinued.

Sixteenth. You will make all reports, send all applications, all orders for blanks, books, and circulars, and all letters for instructions to Henry H. Koon, gen'l agent, Chicago, Ills., and do all your business therewith.

Seventeenth. The parties of the first part reserve the right to revoke

this contract, or any part of it, at any time this agreement is not complied with on the part of William G. Herron, of Monticello, Ills., of the second part in the foregoing provisions and conditions.

In witness whereof the parties of these presents have hereunto set their hands the day and date above mentioned.

PHŒNIX MUTUAL LIFE INSURANCE COMPANY.
WILLIAM G. HERRON.
(Signed) HENRY H. KOON,
General Agent.

[Stamp.] Not good unless countersigned by Henry H. Koon.

For and in consideration of the sum of one dollar paid by the Phœnix Mutual Life Insurance Co., of Hartford, Conn., I do hereby pledge the fulfillment of the above contract on the part of William G. Herron, of the town of Monticello, county of Piatt, State of Illinois.

Dated this thirty-first day of May, 1871.

Copy of Exhibit B, attached to the first deposition of William G. Herron.

52 It is a fact of universal acceptance and knowledged among the insured and the agents of the Phœnix Mutual Life insurance Company, of Hartford, Conn., that a policy in said company ceases to be in force and is void if the premium is not paid on the day it falls due, and that the acceptance of a premium subsequently is merely an act of grace at the option of the company, and renews the policy only from the actual date of payment. These facts are advertised in the papers and documents of the company, and no agreement which is inconsistent with them was ever made by me with any policy-holder or any statement which would lead them or him to suppose that these conditions waived in their or his case.

(Signed) W. J. HERRON.

I may have said to parties, knowing them to be good for their contracts, that I would carry them for a few days to the end of the month; in such cases marked them paid on books when due.

(Signed) W. J. HERRON.

I acted as agent of the company in the collection of renewal premiums due from policy-holders, at Monticello, Illinois. I solicited the application for Jackson Riddle's policy, and sent it to the company, and a policy was issued on that application. I collected the renewal premiums on Jackson Riddle's policy while I remained at Monticello, Illinois. I collected the premiums for the years 1872, 1873, and 1874. I was furnished with renewal receipts for those years by the general agent at Chicago, Illinois. I collect' the renewal premium on Jackson Riddle's policy for the year 1872, about September.
53 20th, 1872, for the year 1873. I cannot be distinct, but I think about September 28th, 1873. It was before the first day October. I usually reported about the first of the month of October, and he had paid before that time. The renewal premium for 1874, I cannot say positively when I collected it; I think not till October some time. I think so because I made no, of Mr. Riddle's renewals in October. I marked it reported in November. My reason was that Mr. Riddle asked me for some indulgence. I think I went to the bank with him; whether I signed a note with him at that time or at another I cannot say, but he got the money, came to my store, and paid it in person. My custom

was to report payment of premiums the first of the month following, but I did not always do it. If the premium for 1874 had been paid during the month of September, I might have paid it and reported it on the 1st of October, or on the 1st of November; I may have paid them to Koon himself. I don't know whether the premium for 1875 was paid on this policy or not. Some time in September I received a draft from Mr. Riddle made at Oxford, Indiana, on some bank in Chicago; I don't know how; I think the amount of his premium. I mailed the draft directed to the company at Chicago. The draft was made payable to my order. I sent it immediately after receiving it to the company in Chicago. Three or four days afterwards I received it back again, they asking me to endorse it in blank and return it; and I endorsed it and returned it immediately. I had not endorsed it when I first sent it.

Int. 19. State what was you' general custom, as agent of the company in collection of overdue premiums?

54 (OBJ.—Objected to by defendant's counsel, because it is incompetent and immaterial. The court overruled this objection & to said ruling of the court the defendant then & there excepted.)

Ans. My custom was to receive them if paid in person in a reasonable time.

Int. 20. State to whom you remitted overdue premiums when collected?

(OBJ.—Objected to by defendant's attorney as incompetent. The court overruled said objection, and to the said ruling of the court the defendant then and there excepted.)

Ans. To Mr. Koon, the general agent at Chicago.

Int. 21. State whether Mr. Koon received those overdue premiums from you and what, if anything, did he write or say concerning their collection after they became due?

(OBJ.—Objected to by defendant's attorney as incompetent. The court overruled this objection and to said ruling of the court the defendant then and there excepts, and still excepts.)

Ans. He received them. I don't know that he said anything particular, unless they run an unreasonable time.

Int. 22. State whether he ever refused to accept any of them, because they were overdue.

(OBJ.—Objected to by def't's counsel as incompetent. The court overruled this objection, and to the said ruling of the court the defendant then and there excepted.)

Ans. He has refused to accept some overdue that had run a considerable time without a physician's certificate of health. I don't know that a physician's certificate of health was ever required of Jackson Riddle.

55 I had a conversation with Mr. Riddle while I was agent of the company in which I said to him that I would not be so particular with him as to a day; that I did not report usually till the first of the month where I considered parties perfectly responsible. I was not so particular. I think I told him once that this company was not so strenuous as some companies I had known of; that I had sent in overdue renewal premiums and they accepted them when the parties were all right. This conversation occurred while I was agent of the company.

Int. 27. State if you know whether Jackson Riddle understood from the conversation that you had with him concerning the acceptance by the company of overdue premiums, and from the reception of overdue premiums from himself, that he could pay his premiums to the company or to its agents within a reasonable time after they became due?

(OBJ.—Objected to by defendant's counsel as incompetent. The court

overruled the objection, and to said ruling the def't then and there excepted.)

Ans. I think he might have so understood it from myself as agent. I think he understood from myself that he could pay me overdue premiums and the company would receive them.

Cross-examination:

I never had from the defendant company any other authority to represent it than that shown in Exhibit A. I never received any overdue premiums for the company except from the parties whose lives were insured in person. I required such payments to be made in person that I might judge of their condition of health at that time.

56 Int. 4. When a payment of premium was due the company and unpaid, you carried it yourself personally without the knowledge of the company when delayed payment was permitted by you, did you not?

Ans. No; not in all instances did I carry it myself.

Int. 5. When any extension was allowed by you it was carried on your individual account was it not.

Ans. Not in all cases.

Int. 6. The company was not informed of any indulgence given by you to policy-holders was it.

Ans. No, sir; I never granted Jackson Riddle any extension of time for the payment of his premiums without expecting myself to be held responsible, more or less. My custom was, in cases where I considered the parties responsible, to mark it paid on the books. I think I had a personal understanding, more or less, with Jackson Riddle that all indulgences granted would be carried by me individually, but if he had not paid it I might have reported it not paid and returned the receipt. I was very friendly with Jackson Riddle; I had full confidence in Mr. Riddle's performing what he said he would. I would not waive a business transaction with him on account of friendship alone. In my reports to the company of premiums received, I did not report the dates on which they were received by me. I understood the rules of the company as to the receipts of premiums overdue, to be as set forth in Exhibit A to my deposition. I don't think I ever made any statement to any policy-holder of the defendant company contrary to those rules.

57 Int. 15. Did you ever have any conversation with Jackson Riddle after your ceasing to represent the company concerning his payments of future premiums? If yes, state when and where it was.

Ans. I had a conversation with him in April, 1875, either in Monticello or at his residence near here.

Int. 16. You may state what it was, and how it came about?

Ans. I said to Mr. Riddle that I had ceased to be agent and that he was about to move to another State; the probability was there would be no agent of the company in the town he was going to move to. I said to him to be a little more particular about looking after his renewal receipts himself. I added to that not to depend on me any more. That is about the substance of it; I think I received from Jackson Riddle while acting for the company two overdue premiums. He paid them to me personally, and was in good health so far as I know. His appearance satisfied me he was in good health.

Int. 20. In your conversation last attended to in April, 1875, was anything said about prompt payments?

Ans. I think I said to him to look after it a little more promptly, as he did not have me to look to. That is my impression at present. I

think Jackson Riddle could read his policy and renewal receipts. I collected on an average fifteen renewal receipts a year. A premium paid any time in the month of September would have shown the same *as* my report to the company as if paid on September 20th. Mr. Koon, agent of the company at Chicago, was here several times, and on such occasions I paid him personally whatever funds I then had belonging to the company, and made no further report of such payments. I have sometimes required a physician's certificate of good health before receiving overdue premiums.

58 Redirect-examination:

Int. 1. When Jackson Riddle sent to you from Oxford, Indiana, the draft in payment for premiums for that year, what, if anything, did he write to you about his then existing health.

(OBJ.—Counsel for defendant objected to any statement of the contents of any letter, and for the reason that the letter was not sent to the representative of the company, and for the reason that it does not appear that the draft was sent after the 20th September, and for the reason that it is not proper redirect-examination and otherwise incompetent. The court overruled said objection, and to said ruling of the court, the defendant then and there excepted.)

Ans. I don't think he said anything about his health. He wrote a letter enclosing the draft to me. I cannot produce it. It is lost, burned, or destroyed. I have looked for it. He, at the time he sent the draft, made no representation to me either orally or in writing as to his health. I did not see him on or about that time personally. I wrote a letter and addressed it to the company at Chicago, as I did not know the general agent's name at that time, not having had any communication with him.

Int. 7. Did you in that letter make any representations as to Jackson Riddle's health?

(OBJ.—Objected to by defendant's att'y as asking for secondary evidence & improper redirect. The court overruled the objection & to said ruling the defendant then and there excepted.)

Ans. No, I think not; I think I gave the address of Jackson Riddle in that letter at Oxford, Indiana. I think I said to the company to send Mr. Riddle's receipt to Oxford, Indiana, and hereafter to com-
59 municate or draw on him there, I think I said that that was his residence. There may have been more in the letter but I cannot say now.

Int. 10. What did you mean in your cross-examination by Mr. Plum about carrying overdue premiums on your own responsibility, or on your own account.

Ans. My answer is to that, that I considered the parties perfectly responsible or good to me or the company. I never delivered renewal receipts until the payment was made to me in any case.

Int. 11. Did you inform Jackson Riddle that you would extend time to him as a matter of friendly accommodation or upon your own responsibility?

Ans. About as near as I can answer that I told him it was a business accommodation. I mean a business accommodation between me, Mr. Riddle, and the company.

Recross-examination:

I never received any premium or any policy issued by the defendant after the death of the party on whose life it was issued. When I marked on my account-book with the company a premium as paid which was

not so in fact, I mean to say it was a transaction between the assured, myself, and the company. I don't think the company ever knew that I ever marked a premium paid on my books when the same was not in fact paid, but I think I said to Mr. Koon, where I considered the parties perfectly responsible, I marked them paid. I understood from my contract with the company that in advancing or remitting moneys
60 for persons insured, I did it upon my own personal and private account.

Int. 5. If the company did not know that you were crediting persons who had not actually paid their premiums, and did not authorize you to extend the time of such payment, how do you make out any such business accommodation as being in part on behalf of the company?

Ans. By their receiving some overdue premiums and not objecting.

Int. 6. You have stated in your first cross-examination that you made reports about once a month; that you did not state therein the dates on which you received any premiums, and that the company did not know that any such had been collected when overdue; now what do you mean by saying as in your last answer?

Ans. I mean I might have reported them after they should have been paid as paid. I don't think I carry anybody's policy when overdue, unless I was first assured that they would pay me; the reason was because I did not want to assume the responsibility for their premium. It was my idea to hold a good risk for the company and myself because I got a commission and the company got a premium. Jackson Riddle was here twice after he moved to Oxford, Indiana.

Redirect-examination:

Int. 1st. When you told Mr. Koon that you were in the habit of marking some premiums as paid that were not paid, what, if anything, did he say?

Ans. I think he used about these words: "All right, but be careful that they are good subjects."

61 Plaintiff next introduced the deposition of S. H. HUBBELL, which is in substance as follows:

My age is 38 years; live at Monticello, Ill., and am a member of the firm of Piatt, Hubbell & Co. They are merchants and collecting agents; my bookkeeper and myself had charge of the collecting department. We acted as collecting agents for the Phœnix Mutual Life Insurance Company from 1871 to 1877. We collected premiums on 5 or 6 policies a year. We were entrusted with renewal receipts for the collection of premiums.

Int. 7. What was your custom as to the collection of past due premiums?

(Objected to by def'ts att'y as incompetent it not appearing that either Jackson Riddle or the company were acquainted with any custom indicated by the question, even if such existed, and otherwise incompetent. The court overruled the objection; to which ruling of the court the defendant then and there excepted.)

Ans. We received them whenever they were paid. We did receive them after they became due—from three days to more than two months after they became due. We remitted the premiums after paid to the general agent at Chicago. We did not notify him when we received the money. He knew when they were due and the remittance would show within a day or two the date of payment. It was our custom when we had several renewals to wait a short time to remit for all, if possible, in one remittance. We had no instructions from the general agent as to

the collection of past-due premiums. There never was any objection made to the collection of past due premiums. I collected overdue premiums after August 1st, 1876, and remitted them to A. G.
62 Fowler, general agent at Chicago. L. J. Weinstein is the name of the policy-holder, premium was paid and remitted on the 12th day of October, 1877, which fell due July 29th, 1877. I did not require any certificate of health before accepting the premium. We were not instructed by the company or its agents to obtain certificates of health.

Cross-examination:

Weinstein was in good health and paid in person. We never accepted any overdue premium, except from the party whose life was insured paying in person, and we considered them in good health. We never had anything to do with Jackson Riddle's insurance. We never informed him about our practices in the matter of collecting premiums. The premiums were about equally divided, part paid promptly and part paid slow. Mr. Morrison, our bookkeeper, attended partially to the collection of premiums, but not largely. I have often read the words printed on the back of the renewal receipts sent us for collection. If a party had been delinquent and in bad health I would not have received the premium.

Redirect examination:

In remitting to the general agent premiums collected when overdue we made no representations as to the state of the policy-holders health.

Plaintiffs then introduced the deposition of SAMUEL B. WEBSTER, who testified in substance as follows:

My name is Samuel B. Webster; am 42 years old; am postmaster at Monticello, Illinois; have been postmaster here since 1868. I knew Jackson Riddle during his lifetime at Monticello, Illinois. He moved
63 to Oxford, Indiana, in the spring of 1875. He instructed me to forward his mail to him at Oxford, Indiana. I don't remember that any mail matter came for him in the months of August or September, 1876. I don't remember that I forwarded any mail matter to him during those months. I have a book in which I keep a register of letters forwarded; I kept it in August, September, and October, 1876. My intention was to keep *in* a register of all letters forwarded. I have examined that register for the months of August, September, & October, 1876, and it does not show anything about letter forwarded to him at Oxford or elsewhere. Judging from the book alone I should not think any mail matter had been forwarded to him, although there might have been. The register is intended to guide me in forwarding letters. I am not ordered by the department to keep such register. My intention was to put all such letters down, but I might not do it. My judgment is that I put them all down, but I may not have done so. I kept also a register of returned letters. That register shows no letter returned to the Phœnix Mutual Life Insurance Company nor A. G. Fowler during the months of August, September, & October, 1876. It is not a full register of all letters returned.

Cross-examination:

I don't remember that Jackson Riddle was here after he moved but he might have been. I had a deputy in the post-office. No letter coming to my office would have been delivered to any one but Mr. Riddle, unless the person calling for it had an order from him. It is possible that Jackson Riddle might have received letters at this office himself in the

months of August, September, and October, 1876. Any letter
64 which came to this office directed to him would have been delivered or forwarded to him, and a letter coming to this office for him would have been as likely to have reached him at Oxford, as if mailed direct to him there. The books I have mentioned are in the post-office. In forwarding a letter no addition' postage is required. We did not keep a close account of letters forwarded; we kept the books only for own convenience. I should not have returned a letter directed to Jackson Riddle, even if a card had been on it directing it returned, I should have forwarded it.

Redirect examination:

My deputy and myself both had access to the forwarding register. I don't know as I can particularize any one letter forwarded which is not registered in that book. I aimed to enter in that book a majority of all letters which were forwarded to any party. I don't know any particular letter that I did not enter, but I kept it as a guide according to the circumstances.

Plaintiff read in evidence the second deposition of ALLEN G. FOWLER, which is in substance as follows:

My name is Allen G. Fowler; I am 47 years of age, it may be 46 in my other deposition, as my birthday was the 10th of this month; residence, Chicago; occupation, insurance. I am superintendent of the western department or the title in my contract. I had better explain: a superintendent of western agencies—that, perhaps, would be the term. My contract is in evidence; it is in about the middle of December, 1875. My impression is it is between the first and fifteenth of December, 1875,
65 that the contract was made—[witness referring to contract]—it is the 13th of December. I was sent here as an expert to examine the books of Mr. Henry H. Kohn, our former agent here. I am in possession of the office of the company, and control its business here. I have the books, papers, and the affairs of the company in Chicago under my charge. I have been served with a subpœna duces tecum to bring with me for this examination the registers and renewals of policies in the Phœnix Mutual Life Insurance Company for the years 1872–'73–'74–'75–'76, and a letter written by Wm. G. Herron, of Monticello, Illinois, to the said company or their agents about the month of September or October, 1875, in which was enclosed a draft for the payment of Jackson Riddle's premium for the year 1875, upon his policy No. 56960 in said company, and also his application for said policy and the premium notes executed by him to said company in part payment of premiums of policy. I have brought with me all the books and papers that were in my possession. They are the registers and the letter referred to. The application and the premium notes would be in the company's office at Hartford. They are not kept in this office. I have the letter referred to.

Ques. Will you produce it?

(Counsel for defence objects to the introduction of the letter, because it is a letter between the company and the party not one of the plaintiffs. The court overruled said objection, to which ruling the defendants' counsel then and there excepted.)

I will attach the letter to my deposition. I understand that it is the letter in which I received a draft in payment of the Riddle
66 policy. The application for the policy is not in my possession. I cannot state where it is. I can state where it would naturally

be, but it may have been taken from there for some purpose not within my knowledge. It would naturally be in the files at Hartford. It is not in my office subject to my control. I cannot swear that anything is not in my office. I don't know of its being there, sir. I don't remember of ever having seen it. I have no copy, to my knowledge, in my possession or in my office. Don't know as a positive matter where the four premiums notes executed by Jackson Riddle, in part payment of the premiums of said policy ; presume they are in the company's office at Hartford. Have not copies of those notes in my possession or in my office; don't think I ever saw them. I would not see them in the ordinary course of business.

Ques. Will you refer to the register of renewals for the year 1872, and turn to the pages upon which are entries in relation to Jackson Riddle's said policy?

Ans. I have the entries. Folio 91 of register B.

Question. Now I wish to ask if you will attach to your deposition a copy of that page 91?

(Counsel for the defendant objected to the attaching of the copy of the folio, or any single item contained in the copy, on the ground that it is irrelevant and incompetent, and also objected to the attaching of a copy f any single entry contained in the folio, for the same reason. The court overruled said objections, to which rulings the defendant then and there excepted.)

I will, and mark the same Exhibit B. I cannot say, but believe that entry to be the only one in the book of renewals for 1872; but
67 the book is a very large one. I have never gone through it. It is the only one, to my knowledge. Will turn to the renewals for the term 1873. I find the entry in relation to Jackson Riddle's policy on folio 46 of register C.

Ques. I will ask you to attach a copy of that page.

(Counsel for the defendant objected to the attaching of the folio or of any single item contained in the copy, on the ground that it is irrelevant and incompetent, and also objected to the attaching of a copy of any single entry contained in the folio, for the same reason. The court overuled said objection, to which ruling the defendant then and there excepted.)

Answer. I will, and mark the same Exhibit C. In register for 1874 I find like entries on folio 95 in register C. I will attach a copy of the entries upon that page. (Exhibit D.)

On the register of 1875 the page is folio 6 of register E. Will attach to my deposition a copy of the entries upon that page (Exhibit E); for the year 1876, I find the entries in relation to that policy folio 52 of register E. Will attach a copy of that page to my deposition, and mark the same Exhibit F. I have not, to my knowledge, any other paper or books in my office or subject to my control which would show at what time these premiums were paid or the renewals made in the different years. There are a large number of old books that have existed a good many years that I have never examined item by item. The meaning of the entry under the head of remarks, in the last column on the page in the book of renewals for the year 1872, when you find "Nov.," is, that the agent in Chicago reported that to the company in the month of November.
68 It is stated at the head, reported "in the month of;" that means the time that the agent reported to the company at Hartford, and not the time in which the money was paid or reported to the agent.

Cannot testify that that is the same in regard to all the other entries under the head of remarks without going through. There had been two sets of agents here. Our books might vary somewhat from the home books in 1873. There is no date; it is simply "reported." The remittance was received from the local agent, from Monticello, October 9th, 1875, for the renewal of that year; but that don't indicate when it was paid to him; should be explained, and we report it to the company October 15th, in our October 15th reports, 1876. Would be just the same, because it is under our system. That was not paid at all. Returned special letter October 9th. I suppose that is the meaning of the abbreviations "S. L." I don't swear to it. You had better get the testimony of the bookkeeper in regard to that. He is the man who made the marks. The payment noted on 39051, Adam Eisenhauer, are interest payments on notes held by the company. The entry of December, in the last column, under the head of remarks, in relation to the policy of Adam Eisenhauer, is explained by the heading "reported in the month of December to the company at Hartford," by Agent Koon, whose books these are. The policy, as we have noticed it in the register, is a policy upon which simply there are notes for a portion of the premium loaned, and these payments are payments of interest upon those notes; not payments of premium; that is, I have examined them as we looked at them casually. There was a time in the history of the company sometime, but it don't appear from the books I have
69 looked upon, when that was a policy, but all the payments that remained to be made were to be interest on notes which the company held. There is nothing in these entries by which you can determine when the premiums were actually paid.

Cross-examination:

I received from Mr. William G. Herron, whose name appeared in the books of the office here as our local agent, at Monticello a letter dated October 5th; it appears this letter enclosed a draft for $165.41; the draft was unendorsed. I cannot now recall as a matter of positive evidence to whose order it was drawn, but it required the endorsement of Mr. Herron, I believe, but I don't know that as a fact, but I am it required the endorsement of somebody because it was returned for that endorsement October 7th, and it was sent back to me in the same letter with this memorandum: "Please send renewal receipt to Mr. Riddel, at Oxford, Indiana," and on the side of my letter was written, "I am not agent now;" that is the first intimation I had that he was not the agent of the company; as a matter of rule local agents are required to report to general agencies on the first of each month; we insist upon their mailing their reports by the 8th of each month, that is, our specials; impress it upon them that it is necessary in order for us to get our report off, which we mail to the company on the 15th of each month, that the local agent's report should never be delayed under any circumstances beyond the 8th; and that each report should include every renewal premium and policy premium which have been collected for 30 days previous.

70 Ques. Have you ever during your position you now occupy here had any local agent to specify in his report the day on which his premiums are paid, or do they just send them forward in a mass at the end of each month, those collected the month previous?

Answer. I have never had them communicate the day on which they collected the premiums, that I remember. There is nothing in the reports from which I can tell the exact date of the payment of the pre-

miums to the local agents; there was nothing in this report which I have just testified to, enclosing this draft of Jackson Riddle policy, which communicated to me on what day Mr. Riddle had paid it to Mr. Herron. There is nothing on the book, from my knowledge of the business, which would show at what time Riddle paid the money to the local agent, or at what time the local agent sent the money to the general agent. From my knowledge of the business of General Agent Koons, this premium might have been received on the day on which it was due and yet not have been reported until November. It is a fact that, from my knowledge of his affairs, Mr. Koons was derelict in reporting and was a defaulter to the company; his books were in such a condition that we had great in finding out whether premiums had been paid or not. In many instances we had to take the evidence of parties and their neighbors to find out; we discovered that entries marked unpaid had been paid by the policy-holders on the day on which they fell due, and we had to take evidence of it afterwards—after I took possession of the books. My recollection of what occur'ed concerning *what*
71 the payment of the premium of this Jackson Riddle policy for the year 1876 in my office, within my own personal knowledge is this: I was sitting in an adjoining room to the cashier's, Mr. Bickford, with the door open between the two rooms; I heard somebody enquire of him in words substantially like this: "Will you receive the money for renewal premium?" I did not hear Mr. Bickford's reply, nor do I remember the remainder of the conversation; but there was something in the inquiry and in the manner in which it was made which led me to say to Mr. Bickford, "When you find that renewal receipt bring it to me." Shortly afterwards Mr. Bickford brought it to me. I observed that it was past due and said to Mr. Bickford, "Of course you will require a certificate of health in that case." I heard him say to the person, not in my view, that he would require a certificate of health before receiving the premium, and the person remarked, substantially, "Why, he is dead!" It was the sound of his voice more than anything else, as I remember, that caused me to suspect that something was wrong. I don't think I saw the party at that time; feel sure that he did not come into my room at that time. From memorandum I have in my possession, which I have examined since I was examined here last, which memorandum was made that day in a couple of letters which I wrote to the company, I had a personal interview with a gentleman that day; the man came back the same day, came into my room, and said substantially that he had been requested to make a tender of the premium in that case; stated that he had no money belonging to the parties,
72 and if I was going to receive it he didn't want to make a tender; but he could use the money for a few minutes or long enough to make a tender without any inconvenience. I said to him if it would accom'odate him any I would say that I should not receive the premium. He was then alone; he subsequently returned with a witness; he went away after this conversation. I can't recol'ect how long it was before he returned, it was quite a little time, I should think. I believe now that it was during the same day. I should say here by way of explanation that I was under the impression, without examining before, that it was the day following, but having refreshed my memory from these letters I now think it was the same day. I next saw this gentleman and learned his name, not until when examined here; his name may have been mentioned during the interview, but I did not recall the name at the date of my former examination and was informed of here, but I did not then remember that I had heard it before; I did not

learn his name at the time he returned; he returned the second time to me the same day with another person, laid a package of money upon my desk, read a statement asking me to receive the money and admit the statement; I declined to do either. This renewal receipt in this case was not in my possession at the time the tender was made. It was not in the possession of any one at this agency at that time; it had been sent to the company at Hartford before the tender was made. Nothing was said at the time the tender was made. I presume of course that it was made in accordance with our previous conversation;
73 it was made conditional upon my non-acceptance. At the time that I spoke of this gentleman coming there and asking me if I would accept the money if tendered stating that he had no money of the parties and so forth, that I testified to, nobody was in the room. Mr. Bickford was in an adjoining room. The gentleman that came there and made *and made* that proposition to me, and afterwards returned with a witness to make the tender, was Mr. Blain, I am informed. I did not see him testify in this case before upon depositions taken here; was not here when he was examined; don't remember that I was present at his examination; he was the only party who came to see me at any time concerning the making of a tender in this case. (Paper shown witness.)

That is a copy of my contract with the company. (Book shown witness.)

That is my private letter copy-book. On page 190 in this book I find a letter to Mr. J. M. Halcomb, secretary of the company, dated October 9th; this letter contains something connected with the Jackson Riddle loss. I will attach a copy of it to my deposition. The next letter is on page 193 of the same book, and of the same date. I will attach a copy of that to my deposition. (Paper shown witness.)

That is a copy of the contract under which I am in the service of the Phœnix Mutual Life Insurance Company. I will attach that to my deposition. I should explain that I was not acting under this contract at the time of this transaction. I have compared this, and my affidavit is on the back that it is a correct copy.

74 By agreement the original contract is not demanded. The copy may be used subject to objection of counsel for the plaintiff.

I was not operating under this contract on the 9th of October, 1875. I was not operating under that contract in October, 1875; I was during the months of September and October, 1876. I made a contract with the Phœnix Mutual Life Insurance Company at the beginning of March, 1870, for 5 years; that contract expired by limitation March, 1875, and no new contract had been made, but I continued to act in the same capacity until the contract just introduced in evidence was made. I was operating on a contract from 1870 in the employ of this company which had expired prior to the fall of 1875. I was acting under that former just testified to, in the States of New York and Pennsylvania. I came to this territory about the 28th of July, 1875, on a telegram from Mr. George W. Moore to come here prepared to stay two weeks; the next Monday after my arrival I took charge of the office of the defendant, in Chicago; think it was about the first of August; I say I took charge, that is not a proper expression: Mr. George W. Moore was in charge. I was here merely as an expert to assist him in examining the business of this territory; I was not left in charge as a fixed employment here, the fixed agent of the company at this place until I came back after the execution of this contract in Hartford, Decem-

ber 13th. The collection of renewal of the Jackson Riddle policy for the year 1875 was collected at the office here under my direction; no other person except myself had any control of that collection that I know of. I suppose that for the purposes of that collection I was
75 acting as the agent of the defendant, but I will say I don't think I am competent to decide in regard to my own powers. Perhaps the statement that I assumed control of that collection is too strong a term. Mr. Moore handed me a package of renewals after directing me to come to the office. I cannot rembember that anything was said in regard to their collection, that from my former experience I knew what it was proper to do with them; I think I directed Miss Suell, a lady clerk in the office, to send out a notice to the policy-holders, and to send those which belonged to the local agencies to the local agents for collection. I cannot remember that I was directed to do so by any one. It was in answer to that, that I received this remittance from Mr. Herron. I can't tell where the books show the post-office address of Mr. Jackson Riddle to be during this transaction with the company; I have never looked at it; Mr. Bickford can probably tell you.

(Witness turning to book.)

"Monticello, Herron agent, 1872."

"Monticello, Wm. G. Herron agent," 1873.

"Monticello, Wm. G. Herron agent," 1874.

"Monticello," 1875, "Monticello," 1876.

Monticello is in the State of Illinois, I believe, sir.

"Piatt Hubbell & Co." They were the bankers through whom we sent the renewals for collection; we sent this renewal receipt to them for collection; we had no agent at that place at that time to my knowledge; I will say I don't think we had; I don't think we had any agent there in 1876. I don't think Pyatt Hubbell and Co. ever done any business for the company except to collect premium receipts sent to them; they never to my knowledge took any applications; I don't think they ever did through our agents, or it would have come to
76 my knowledge. I knew of no removal of Jackson Riddle from Monticello until the reception of this letter. Personally I had no knowledge of the residence of Jackson Riddle. I notice by the phraseology of this letter that he might have been at Oxford temporarily, or resided there; it says simply, "please send renewal receipt to Mr. Riddle, at Oxford." I never notified the company, the defendant, of the contents of this letter, nor did I to my knowledge notify any of the officers of the company.

Ques. Did you know of your own knowledge why it was you sent the record and third notices of this renewal, to Indiana?

Ans. I know the general practice of the office, but not the special purpose with which they were sent; I probably was cognizant of these notices being sent at the time they were; Mr. Bickford would know about that. Notices were sent after premiums were due, under my directions, with a view of giving the policy-holders an op'portunity to apply for the restoration of their policies when lapsed. We frequently send as many as two or three notices. The purpose of sending those notices after the premiums were due was to give them an opportunity to restore their policies. There were instructions sent to special agents concerning the receiving of payments for premiums after due; I believe as a matter of memory that such notice was on back of renewal receipts for 1875, which was shown here and is already in evidence in this case; as I remember it, there was such a notice in red ink

on the back of it, that agents were not allowed to alter or amend contracts or revive lapsed policies. I don't pretend to repeat the words, but in substance that such warnings to policy-holders were pub-
77 lished on almost all the documents of the company in some place. All the little pamphlets that have been used, they had such warnings ever since I have been connected with the company. Those pamphlets were distributed *a*broadcast over the country; I believe they are on the policies themselves. They are a great variety of policies issued at different times; many of them I think, in fact most all of them, and I don't know but all of them do; but I would not like to say they did, because there are a great many issues. The custom of the defendant concerning the sending of notices to policy-holders at the same time of sending the renewal receipts to local agents for collection of the premium is hardly well established; in some cases we do it, and in other cases we do not do it. We have sent notices to policy-holders that they would find their renewal receipts with *with* certain local agents in some cases, and in others we have not. I believe we have never sent notices to policy-holders in St. Louis, for instance, and other points, thinking that the local agent would deal directly with the policy-holders; in other cases we have sent notices.

To small places through the country we generally send a notice that they will find their renewal receipts. I would like to have one of those notices; you have one here, I presume. We send notice that their premiums are due on a certain day at our office, giving the amount of the premium and the amount of cash to be paid, and in the present notices that have been adopted since the 20th of September, 1876, there is a blank in which we state when it will be found for payment; prior to that time we didn't so state, it appears. (Paper shown witness.)
78 This is a copy of the notice sent Mr. Riddle, I presume. I am not qualified to say whether that is a copy, because I did not send the notice in the first place, but it appears to be a copy, from the notice I hold in my hand. Mr. Bickford made that copy, and he will know. I think there was a little poster on the notice, the same as they use at elections, stating: "You will find your renewal receipt at the bank of Pyatt, Hubbell & Co." I am not positive, but I think Miss Suell had a little poster that she used to put on. We are accustomed to sending these notices directly to the parties in some of the towns where we have agents, to whom we send renewal receipts for the purpose of collection, but not to every town. It was not a general practice. Mr. Bickford will be able to testify more clearly in regard to that practice than I am, as all the notices are sent by him, and previous to this time they were sent by Miss Suell. I would be under the impression that to all the towns in this State we did send such notices almost if not quite universally. It is pretty difficult for me to tell about the notices, for I didn't send them myself. I did not hear in the conversation I heard between Mr. Blair and Mr. Bickford, Mr. Blair made any intimation that Mr. Riddle was dead, or at all in ill-health, until after the renewal receipt had been brought to me by Mr. Bickford and by him taken back to where Mr. Blair was. I don't believe he made such intimation at that time, for I was in the next room—of course it would be possible for a remark to be made in a low tone. I heard nothing of the kind; it was nothing of that kind that caused me to suspect that there was something wrong.

Redirect examination:

79 This letter, Exhibit "A," was written October 7th, 1875. I cannot say that this marginal statement was on it at the time it

was returned to me; I think so, but I don't know it. Yes, I know you mean the words, "I am not agent now." I have no memory in regard to it except so far as I see it there now. The indications are that this letter, when it came back, was received by Miss Snell. I see it is answered in her handwriting on there. I can only say that I presume that this letter contained the draft for Jackson Riddle's renewal for that year.

Recross-examination:

Miss Snell was in Mr. Koon's employ when I came to Chicago, and she continued along I guess without any definite arrangement; still Mr. Moore may have employed her without my knowledge, or may have had conversations with her that I would know nothing about; her duties were those of a clerk in the office. When I used the term "legal representatives" in my letter, my meaning was simply that they were representatives. I think "legal" was thrown in for a ballast—don't know that they were really legal representatives at all. I know I didn't know anything about it, but I guess I used it as public speakers sometimes use large words in a speech to give it the right tone, for, as I remember now, I didn't know whether they were the legal representatives or not. I knew that they claimed to represent them in some capacity. We have a custom in the management of the business of the defendant of requiring certificates of good health when premiums are past due; the rule of the company is that the restoration of a policy after the date that it is due is solely an act of grace, and it is
80 at the option of the company whether to restore or not; where the premium is only a few days past due, and the money is sent to the office to pay it, we require a certificate of which this is a blank. If the premium has been unpaid until we have returned the renewal receipt to the company, and we write for its return, the man offering to pay it, the company send a second certificate, of which this is a copy made out for Allen Whitsel. We have no blanks of those, as they are kept in the company's office, but that one being useless I brought it over, and it may be attached to my deposition.

If a renewal receipt has been returned to the company, that certificate must be signed and returned to the company before the renewal will be sent to us again, or sometimes it is returned to us with the renewal receipt to be signed before the renewal receipt is delivered.

That is our invariable rule. I never have known an exception. These exhibits are to be signed by the policy-holder and beneficiaries; we consider after the policy-holder has signed the certificate and pays the premium, if he is the husband of the beneficiary, he is authorized by law to pay the premium and secure the insurance for her benefit, and we accept his certificate and warranty that he is in good health. I never have received any notice of intimation from any kind from Jackson Riddle or his representatives, or his beneficiaries of the policy, that there was any intention on their part or any one of them to pay the premium for 1876, or any other year. From my position with the defendant I would not be likely to know whether any notice sent to Jackson Riddle would have been returned to office. I might know it.

81 It wouldn't be directly within my duties. It might lay before me, but the chances are I would not examine a returned letter to see who it was from. My book-keeper would do that on every occasion. My book-keeper is Mr. A. S. Bickford. I never have seen any such notices returned. I do see them, as a matter of fact, occasionally, but I have never seen any returned notices from Mr. Riddle.

Redirect examination:

It is an invariable rule of the company to require a certificate of this kind where the premium is not paid when due, except when the agent is personally acquainted and in association with the insured from day to day, and he comes in person to pay his premium and the agent is satisfied by his own observation that he is in good health. That only applies to when the renewal receipt is not returned to the company, and is in our hands. When the renewal receipts has been returned to the company there is no exception. The larger of the two forms there is the warranty, and is invariably required when the renewal receipt has been returned to the company. The renewal receipt for 1876 for this Riddle policy had been returned at time that the money was tendered to me by Mr. Blair. I returned it on the ninth, the same day of the tender of the money, but before the interview took place at which the tender was made, and after the interview with Mr. Bickford, I supposed. Yes, it was after the interview with Mr. Bickford. I mean, when I say it was returned, that I sent it to the post-office; I had deposited it. I had sent the letter out by the office-boy and he had placed it—I suppose he had placed it either in the post-office box or in the post-office; he was
82 to do so. I don't know of my own personal knowledge that it was delivered in either place. I know I sent him with it; he took it and went out of the office with it, and I have no doubt it was deposited in the post-office box near our office or carried to the post-office.

When I am present at the office I receive and open all the letters that come to me by mail or to the office; when I am absent from home Mr. Bickford opens all the business letters; when I am in the office Mr. Bickford generally receives the letters at his desk, but they are passed on to my desk and I open them; when Mr. Bickford is out of the office they are laid upon his desk usually, and I stop and get them or the office-boy brings them to me or he hands them to me. Generally all the letters are delivered through his window and passed from him to me, when he is present; after I have opened them I hand them back to him. At this time and up until within 23 or 24 days, it has not been possible for the postman to reach my room; my room has been inside of Mr. Bickford's room and could entered only through this room. The postman could not get into my room and he would deliver at the office window, and Mr. Bickford would bring them to me when Bickford is there, and Mr. Bickford is almost invariably there; he is so rarely absent as to be very exceptional; I don't know when he has been absent a day except to move on the first of May just now; to move his household effects he has made, I guess, three little trips, involving perhaps a day or two's absence in the nearly three years that he has been with me. I think he retains letters that
83 are returned according to the notice on the back of the envelope, although I think that rule varies sometimes; that they will go on to my desk and are handed back with the others. In that case I rarely open them—I don't remember of ever opening one—but I hand back the returned letters to him and he goes through the mail and answer' the general correspondence. Mr. A. L. Bickford has charge of sending notices that premiums are due.

Copy of Exhibit A, attached to the second deposition of Allen G. Fowler.

CHICAGO, *Oct.* 7, 1875.

WM. G. HERRON, Esq.:

DEAR SIR: I return herein draft for $165.41, received in your favor

of 5, inst., for endorsement. Please endorse, and make payable to the company or myself. The amount is right.

Truly yours,

(Signed) A. G. FOWLER.

Please send renewal receipt to Mr. Riddle, at Oxford, Ind., in care Banks. Name on check. I am not agent now.

Yours very truly,

W. G. HERRON.

EXHIBIT B.

Register of renewals issued through Chicago, Ills., agency, Phœnix Mutual Life Insurance Company.

Date.	No. of policy.	Name.	Residence.	Agent.	Amount	Total premium.	Note.	Cash.	Interest.		Total cash due.	Amount of dividend.	Year for which dividend.	Notes surrendered.	Excess of notes over dividend.	Balance of cash due.	Remarks.	Reported in month of—	
									In how many notes.	Amount.									
1872.																			
Sept. 14.	7415	Orson T. Johnson	Galesburg			80 80		40 80	4	9 60		40				50 40	Paid	Oct.	Nov.
15.	47401	Wm. T. Redman	Chicago			169	84	85	3	15 12	100 12						Paid	Oct.	Nov.
"	47402	Erastus D. Doty	"			130	65	65	3	11 70	76 70						Paid	Oct.	Nov.
"	51370	Geo. Hauslin	"		(4)			45 50			45 50						Paid	Oct.	Nov.
16	47310	Leonard Myers	Danville	P. Wilber	(2)	125 72	62	63 72	3	11 16	75 83						Ret'n'd	Sept.	
"	47312	Susan C. Myers	"	"		52	26	26	3	4 68	30 68						Paid	Dec.	
	61894	Cha's Clary	Charleston	Hebbard	(4)			14			14						Paid	Dec.	
17.	22376	Peter M. Almon	Chicago			169		85	4	20 16		84				105 16	Paid	Oct.	Nov.
"	22379	Geo. D. Burkley				41 80		21 80	4	4 80		20				20 60	Paid	Oct.	
"	22380	Otto. Jime				182		91	4	21 84		91				112 84	Paid	Oct.	Nov.
18.	61932	Cha's W. Narr	Charleston	Hibbard	(4)			6 50			6 50						Paid	Dec.	
"	61933	N. W. Pepper	"	"	(4)			8 60			8 60						Ret'n'd	Nov.	
19.	47351	Jno. Brenock	Chicago			157 50	78	79 50	3	14 04	93 54						Paid	Oct.	Nov.
	47353	Jos. B. Keeler	"			138 50	69	69 50	3	12 42	81 92						Paid	Oct.	Nov.
	61974	Edward M. Jenkins	Chenoa	Mahan	(4)			9 85			9 85						Paid	Nov.	
	61975	Phillip Jenkins	"	"	(4)			29 50			29 50						Paid	Nov.	
	61976	D. M. Oliver	Charleston	Hibbard	(4)			8 65			8 65						Ret'n'd	Nov.	
20.	39049	John Blahn	Chicago		(4)	5 37						1 61				3 76	Paid	Oct.	Nov.
"	39057	Adam Eienhauser	Peoria						4	4 32	4 32			4	72		Paid	Dec.	
"	39052	Seth G. Copp	Chicago		(4)	10 17						3 05				7 12	Paid	Oct.	Nov.
"	56960	Jackson Riddle	Monticello	Herron		215	107	108	2	12 84	120 84						Paid	Nov.	
"	56961	Hy. H. Ames	Blue Ridge	"		107 50	53	54 50	2	6 36	60 86						Ret'n'd	Sept.	
"	56962	Jno. Bertels	Lexington	Mahan		130	65	65	2	7 80	72 80						Paid	Nov.	

EXHIBIT C.

Register of renewals issued through Chicago, Ills., agency, Phœnix Mutual Life Insurance Company.

Date.	No. of policy.	Name.	Residence.	Agent.	Amount.	Total premium.	Note.	Cash.	Interest.		Total cash due.	Amount of dividend.	Year for what declared.	Notes surrendered.	Excess of notes over dividend.	Balance of cash due.	Remarks.	
									On how many notes.	Amount.								
1873.																		
Sept. 19.	47357	John Brennock	Chi	H. H. Koon		157 50	78	79 50	4	21 84	101 34						Paid	Reported.
	47353	Joseph B. Keeler	"	"		138 50	69	69 50	4	19 32	88 82						Paid	Reported.
20.	47401	Wm. T. Redman	"	"		169	84	85	4	23 32	108 32						Paid	Reported.
	47402	Erastus D. Doty	"	"		132	65	65	4	18 20	83 20						Paid	Reported.
	56960	Jackson Riddle	Monticello	Wm. G. Herron.		25	107	108	3	22 47	130 47						Paid	Reported.
	56962	John Bertel	Lexington	Mahan		130	65	65	3	13 65	78 65						Returned	Reported.
21.	47415	John Hogle	Chi	H. H. Koon		163	81	82	4	22 68	104 68						Paid	Reported.
	17515	Simeon P. Steward	Wilmington.	"		86		43	4	12 04		43				55 04	Paid	Reported.
22.	13256	Wm. T. Harlow	Dixon	"		48 07		24 07	4	6 72		24				30 79	Paid	Reported.
	13253	Joseph C. Lamph	Chi			43		22	4	5 88		21				27 88	Paid	Reported.
23.	67200	Christian Engle	"	"		412	206	206	2	28 84	234 84						Paid	Reported.
	67201	Jarard Gray	"			897 40	448	449 40	2	62 72	512 12						Paid	Reported.
	67202	Jno. L. Manning	"	"		101	50	51	2	7	58						Paid	Reported.
										1 05							Paid	Reported.
	67204	Jno. P. Davidson	"	"		118 80	59	59 80	2	8 26	68 06						Returned	Reported.
24.	7427	Geo. L. Chapin	"	"		54 20		27 20	4	7 56		27				34 76	Paid	Reported.
	39113	Jno. E. Poole	"	"		34 95		17 95	4	7 56		17				22 71	Paid	Reported.
26.	3196	Robt. B. Zimmerman	Springfield	"		59		39 34				19 66				39 34	Paid	Reported.
27.	4477	John A. Mack	Concord, Morgan Co.	"		18 46		12 40				6				12 40	Paid	Reported.
	39198	Ebbet Sharkford	Chi	"		12 70		31 70	4	8 68		31 00				40 38	Paid	Reported.
29.	39250	Fred. S. H. Finch	"	"		85 80		43 80	4	11 76		42 00	M. gold at 1.13			55 56	Paid	Reported.
30.	47621	Josiah Alexander	Clinton, Mass	"		190	95	95	4	26 60	121 60						Paid	Reported.
2.	12986	Henry Gehoke	Chi			20 06		60 06	4	16 80		60				76 86	Paid	Reported.
8.	13071	Geo. Metz	"			47 80		24 89		6 44		23				31 24	Paid	Reported.

EXHIBIT D.

Register of renewals issued through agency Phœnix Mutual Life Insurance Company.

Date.	No. of policy.	Name.	Residence.	Agent.	Amount.	Total premium.	Note.	Cash.	Interest. On how many notes.	Interest. Amount.	Total cash due.	Am't of dividend.	Year for which dividend.	Notes surrendered.	Excess of notes over dividend.	Balance cash due.	Remarks.	
1874.																		
16	61894	Chas. Clary	Charleston	G. J. Hibbard	(4)	14 00										14 00	Paid	Reported.
"	66992	Wm. A. Burtess	Chicago	H. H. Koon.		314 65	157 00	157 65	(2)	32 97						190 62	Returned	Reported.
"	22380	Otto Jevens	"	"		182 00		118 30	(4)	25 48		63 70				143 78	Returned	Reported.
17	22379	Geo. D. Buckley	"	"		41 80		27 17	(4)	5 60		14 63				32 77	Returned	Reported.
	67023	Wm. R. Plum	"	"		43 00	21 00	22 00	(3)	4 41						26 41	Paid	*
	67022	Adolph E. Shoemminger	"	"		157 50	78 00	79 50	(3)	16 38						95 88	Paid	*
18	61932	Chas. W. Han	Charleston	G. J. Hibbard	(4)	6 50										6 50	Paid	Reported.
19	47353	Joseph B. Keeler	Chicago	H. H. Koon.		138 50		90 03	(4)	19 32		48 47				109 35	Paid	*
"	47351	John Brenock	Chicago	"		157 50		102 39	(4)	21 84		55 12				124 22	Paid	*
"	70029	J. C. Bone	"		(4)	74 25										74 25	Paid	Reported.
"	61974	Edgar M. Jenkink	Chenoa	E. C. & W. T. Mahan.	(4)	9 85										9 85	Paid	Reported.
"	61975	Shelop Jenkins	"	"	(4)	29 00										29 50	Paid	Reported.
27	51291	Geo. T. McMurry		H. H. Koon.	(4)	21										21 00	Paid	Reported.
"	47401	Wm. T. Redman	Chicago	H. H. Koon.		169 00		109 85	(4)	23 52		59 12				133 37	Paid	*
27	4477	J. A. Marks	Concord	"		18 40			P note	68 00		6 00				12 40	Paid	*
20	39057	Adam Einhauser	Peoria	H. H. Koon.	Paid up				Due	3 00						4 55	Paid	*
										65 00								
27	39198	Ebed L. Shackford	Chicago	"	June	62 70		40 76	(4)	8 68		21 94				49 44	Returned	Reported.
20	47042	Erastus D. Doty	Chicago	"		130 00		84 50	(4)	18 20		45 50				102 70	Paid	*
26	3196	Rob't B. Zimmerman	Springfield	"		59 00						19 66				39 34	Paid	*
20	56960	Jackson Riddle	Monticello	Wm. G. Herron.		215 00	107 00	108 00	(4)	29 96		1				137 96	Paid	*
25	62097	Allan Whetsell	Humboldt	H. H. Koon.	In June	42 50										47 50	Paid	*
20	39049	John Blahn	Chicago	H. H. Koon.	(4)	5 37						1 70				3 76	Paid	Reported.
24	39113	John E. Pool	"	"		34 95		22 72	(4)	4 76		12 23				27 48	Paid	*
20	39052	Seth G. Copp	"	"	(4)	10 17						3 16				7 01	Paid	Reported.
24	7427	Geo. L. Chapin	"	"		54 20		35 23	(4)	7 56		18 97				42 79	Paid	*
21	17515	Simeon P. Steward	Wilmington	"		86 00		55 90	(4)	12 04		30 10				67 94	Paid	*
23	67210	Jarard Gray	Chicago	"	June	897 40	448 00	449 40	(3)	94 08						543 48	Returned	Reported.
21	47415	John Hogle	Chicago	"		163 00		105 95	(4)	22 68						128 63	Paid	*
23	67200	Christian E. Engle	"	"		412 00	206 00	206 00	(3)	43 26						249 26	Paid	*

| | | |

EXHIBIT E.

Register of renewals issued through Chicago, Ill's, agency Phœnix Mutual Life Insurance Company, 1875.

Date.	No. of policy.	Name.	Residence.	Agent.	Amount when sent.	Total premium.	Note.	Cash.	Interest.		Total cash due.	Amount of dividend.	Year for which div'd.	Notes surrendered.	Excess of notes over dividend.	Balance of cash due.	When paid.	Remarks.
									On how many notes.	Amount.								
Sept. 27	4477	J. A. Mack	Lombard, Ills.			18 40		12 40				6 00				12 40	Sept. 14	Sept. 16.
22	13256	Wm. F. Harlow	Dixon	Lee Co. Nat. B'k.		48 07		30 29		6 72		17 78				37 01	Oct. 2	Nov. 15.
7	17427	John S. Young	Rochelle			96 16		60 59		13 44		35 57				74 03	Sept. 7	Sept. 16.
"	431	E. Hart	Remington, Ind.			47 80		30 12		6 44		17 68				36 56	Sept. 7	Sept. 16.
21	515	Simon P. Stewart	Wilmington, Ills.			86 00		54 18		12 04		31 82				66 22	Sept. 27	Oct. 15.
16	47312	Susan C. Myers	Danville			52 00		32 76		7 28		19 24				40 04		Ret'n'd Nov. 15.
30	621	Josiah Alexander	Boston			190 00		119 70		26 60		70 30				146 30	Sept. 20	Oct. 15.
20	56960	Jackson Riddle	Monticello			215 00		135 45		29 96		79 55				165 41	Oct. 9	Oct. 15.
17	67023	Wm. R. Plumer	Lombard			43 00	21 00	22 00		5 88						27 88	Oct. 12	Oct. 15.
March 16	61891	Chas. Clary	Charleston, Ills.	G. J. Hibbard		111 00	55 00	56 00		15 40						71 40		Ret'n'd Nov. 15.
13	61872	B. B. Clary	"	"		58 80	29 00	29 80		8 12						37 92		" "
	61932	C. W. Hare	"	"		52 00	26 00	26 00		7 28						33 28		Re't'd Dec. 22
	62097	Allen Whited	"	"		169 00	84 00	85 00		23 52						108 52	Nov. 19	Nov. 15.
Sept. 24	7427	George L. Chapin	152 Dearbon			54 20		34 15		7 56		20 05				41 71	Sept. 24	Oct. 15.
2	12986	Henry Gohlke	121 E. Indiana			60 00				12 60		44 42		15 58		28 18	Sep. 2	Sept. 16.
8	13071	George Metz	133 Cornell			47 80		36 12		6 44		17 68				36 56	Sept. 8	Sept. 16.
22	13253	Joseph C. Sanford	46 River			43 00		27 09		5 88		15 99				32 97	Sept. 22	Oct. 15.
4	17400	Hellen M. King	Mich av			258 40		162 80		36 12		95 60				198 92	Sept. 3	Sept. 16.
"	401	W. R. King	" "			141 84		89 36		19 60		52 48				108 96		Ret'd for p'd up Nov. 15.
"	403	T. Mehring	371 Warren ave			247 23		155 76				91 47				155 76	Sept. 14	Sept. 16.
5	412	Ira Bassett	453 W. Harrison			75 26		47 42		10 36		27 84				57 78	Sept. 6	Sept. 16.
2	22107	Morris Kohn	105 Wabash			32 60		20 54		4 48		12 06				25 02	Sept. 2	Sept. 16.
																4 34		Re't'd Nov.
20	39057	Adam Eienhauser	523 W. Halstead							4 34		3 10						15.

EXHIBIT F.

Register of renewals issued through Chicago agency, Phoenix Mutual Life Insurance Company.

Date.	No. of policy.	Name.	Residence.	Agent.	Amount.	Total premium.	Note.	Cash.	Interest.		Total cash due.	Amount of dividend.	Year for which declared.	Notes surrendered.	Excess of notes over dividend.	Balance cash due.	When paid.	Remarks.
									On how many notes.	Amount.								
Sept. 20.	47401	Wm. T. Redman.....	Stock yards	U. N. Bank..	Aug. 22.	169 00	.....	106 45		23 52	..	62 55	....	.....	.....	129 97	.....	Returned, S. L., paid up Sept. 21.
"	47402	Erastus D. Doty....	Stock yards	U. N. Bank..	Aug. 22	130 00	.....	81 90		18 20	..	48 10	....	.....	.....	100 10	Sept. 21.	Reported Sept. 30.
21.	47415	John Hogle	Chicago	.....	.....	163 00	.....	102 70		22 68	..	60 30	....	.....	.....	125 38	Nov. 8...	Reported Oct. 31.
30.	47621	Josiah Alexander...	Boston, Mass	51 Federal st.	.....	190 00	.....	119 70	3	55	26 60	..	70 30	....	.....	.....	146 30	Sept. 14.	Reported Sept. 30.
20.	56960	Jackson Riddle	Monticello..	Pratt, Hubbell & Co.	Aug. 22.	215 00	.....	135 45		16	29 96	..	79 59	....	.....	.....	165 41	.....	Returned, S. L., Oct. 9.
4.	66679	Edward P. Wilson..	Leavenworth, Ks.	Geo. S. Woodard.	Aug. 30	.....	.....	.....	3	39	23 73	..	.....	...	.....	.....	23 73	Oct. 5...	Reported Sept. 30.
13.	66925	James McCreery....	St. Louis, Mo.	Wm. C. Hardy.	Aug. 22	61 20	.....	38 56	S. A. note.		857/46	..	22 64	....	.....	.....	47 63	Oct. 25..	Reported Sept. 30, supp.
17.	67023	Wm. R. Plumn	Chicago.....	.....	.....	43 00	.....	27 10	118		5 88	..	15 90	....	.....	.....	32 98	Oct. 4...	Reported Sept. 30.
7.	77421	George Wetherall...	Leavenworth, Ks..	Geo. S. Woodard.	Aug. 30	.....	.....	.....	8	20	7 70	..	.....	...	.....	.....	7 70	Oct. 5...	Reported Sept. 30.
3.	84466	John Meisel.....	St. Louis, Mo.	Wm. F. Hardy.	Aug. 24	.....	.....	.....	109	80	6 72	..	.....	...	.....	.....	6 72	Oct. 25..	Reported Sept. 30, supp.
8.	84549	Fred. J. Cavanaugh	St. Louis, Mo.	Wm. F. Hardy.	Aug. 24	54 30	.....	.....			7 35	..	7 35	..	.....	.....	46 95	Oct. 25..	Reported Sept. 30, supp.
14.	84649	Sheldon A. Wright.	St. Louis, Mo.	Wm. F. Hardy.	Aug. 24	51 12	.....	.....	101		.....	..	9 10	....	.....	.....	42 02	Oct. 25..	Reported Sept. 30, supp.
18.	84732	Nicholas M. Bell....	St. Louis, Mo.	Wm. F. Hardy.	Aug. 24	31 00	15 00	16 00	5	20	.....	..	.....	...	.....	.....	19 15	Oct. 25..	Reported Sept. 30, supp.
18.	84733	James McCreery....	St. Louis, Mo.	Wm. C. Hardy.	Aug. 22	36 35	18 00	18 35	95	80	3 15	..	.....	...	.....	.....	22 13	Oct. 25..	Reported Sept. 30, supp.
21.	84761	Charles O. Graves...	St. Louis, Mo.	Wm. F. Hardy.	Aug. 24.	26 58	.....	.....			3 78	..	.....	...	.....	.....	26 58	Oct. 25..	Reported Sept. 30, supp.
8.	87367	Adolph Levy.....	St. Louis, Mo.	Wm. F. Hardy.	Aug. 24.	22 88	.....	.....			.....	..	.....	....	.....	.....	19 35	Oct. 25..	Reported Sept. 30, supp.
21.	84762	Herman Brenestock.	St Louis, Mo.	Wm. F. Hardy.	Aug. 24.	98 90	.....	.....			.....	..	3 53	....	.....	.....	84 60	.....	Returned Oct. 31.
15.	87459	Herald C. Robinson.	St. Louis, Mo.	Wm. F. Hardy.	Aug. 24.	22 26	.....	.....			.....	..	14 30	....	.....	.....	18 81	.....	Returned Oct. 31.
29.	87707	Henry Sicher.....	St. Louis, Mo.	Wm. F. Hardy.	Aug. 24.	69 88	.....	.....			.....	..	3 45	...	.....	.....	61 39	Oct. 25..	Reported Sept. 30, supp.
30.	87719	William Hahaman..	St. Louis, Mo.	Wm. F. Hardy.	Aug. 24.	10 83	.....	.....			.....	..	8 49	....	.....	.....	9 13	Oct. 31..	Reported Oct. 31.
												..	1 70	...	....	.....		

EXHIBIT F—(Continued.)

Register of renewals issued thrnogh Chicago agency, Phœnix Mutual Life Insurance Company.

Date.	No. of policy.	Name.	Residence.	Agent.	Amount.	Total premium.	Note.	Cash.	Interest.		Total cash due.	Amount of dividend.	Year for which declared.	Notes surrendered.	Excess of notes over dividend.	Balance cash due.	When paid.	Remarks.
									On how many notes.	Amount.								
3.	90015	Frank M. Gable	Leavenworth, Ks.	Geo S. Woodard.	Aug. 30	12 49	.....	.....		.....	..	1 88	....	....	....	10 61	Oct. 5...	Reported Sept. 30.
4.	90022	Jas. L. Platt.....	Kewanee ...	People's Bank.	.....	.....	.....	.....	192 20									
									6 00	13 02	..	.....	....	....	....	13 02	Sept. 11	Reported Sept. 30, supp.
".	90056	David T. Miller	Ottumwa, Ia.	.....	.....	24 24	.....	.....	186 20	.....	..	3 68	....	....	....	20 56	Sept. 18	Reported Sept. 30.

Copy of Exhibit G, attached to the second deposition of Allen G. Fowler.

This agreement, made on the 13th day of December, eighteen hundred and seventy-five, between the Phœnix Mutual Life Insurance Company, of Hartford, Conn., the party of the first part, and Allen G. Fowler, of Binghamton, N. Y., party of the second part,

Witnesseth that the said party of the first part hereby constitutes and appoints said party of the second part its superintending agent in and for the State of Illinois, and such other territory as may from time to time be added thereto, with authority to appoint and superintend agents, procure applications, and effect assurances on the lives of individuals who shall be satisfactory to said company, and to receive and pay over to said company premiums on all policies issued on such applications, and to collect and pay over premiums on renewals of the same, and to collect and pay over renewals premiums on existing policies issued by said company in said territory.

Said party of the second part covenants and agrees, in consideration of the foregoing appointment, and of other valuable considerations hereinafter named, to act as agents as aforesaid, and to faithfully and thoroughly canvass said territory, for the purpose of effecting
91 insurances in said company, so long as he shall act as such agent, devoting himself to the promotion of the interest of said company exclusively during the continuance of this contract.

Said party of the second part agrees to forward promptly to the company at the close of each month a full and detailed statement of all business done by him during said month, with vouchers for all authorized expenditures, and at the same time to forward, by draft or post-office order, all moneys collected by said party of the second part as such agent, after deducting commissions, fees of examining physicians, postage, and exchange, as hereinbefore specified, and also agrees
92 to forward such statements, vouchers, policies, or renewal-receipts, and all moneys collected, at any time when so requested by said company or any of its officers. Said party of the second part covenants and agrees that he will not make, alter, modify, or discharge any contract, nor waive forfeitures, nor change any of the terms, rates, or conditions of said company, nor receive any moneys due or to become due to said company, excepting on policies and renewal-receipts signed by an officer of the company sent to said agent for collection.

Said party of the second part further agrees that all bank deposits of said company's funds shall be made in some solvent national bank to the credit of the Phœnix Mutual Life Insurance Company, by Allen G. Fowler, agent. Said party of the second part further agrees to keep deposited with said company a bond of indemnity, with good and sufficient surety satisfactory to said company, for the faithful performance of all duties pertaining to the agency, and of all requirements of said agent by said company, and renew or increase said bond as may be required. Said party of the second part further agrees that all books of account, documents, vouchers, and other books or papers connected with the business of said company, at this agency, shall be at any time and all times open to the company or its authorized representatives, and freely exhibited for the purpose of examination, or delivered to the company at any time on demand, and at any and all times when requested to give to said company, or its authorized agents, any information that the possesses relating to the business done by him, or through his agency, for said company.

All moneys or securities received or collected for or on behalf
93 of the company shall be held by said agent as a fiduciary trust, and shall not be used for any purpose whatever, but be held, reported upon, and transmitted to the company in accordance with the terms of this agreement.

It is understood and agreed that any failure to make such report or remittance, or either, at the close of each month, or after a request so to do, or a failure to comply with any of the terms and conditions of this agreement by said party of the second part, shall work a forfeiture of this contract and of all rights of the party of the second part under the same. It is understood and agreed that if said agent has at any time held any relation to this company as agent, or sub-agent, or broker, or otherwise, that the acceptance of this appointment abrogates and annuls such relation in every respect, and said agent shall act as agent for this company solely under this appointment.

Said party of the second part agrees that he will not at any time endeavor to induce or persuade any person who may have been insured by said company to surrender or cancel his policy, or suffer or permit any person or persons in his employ or under his control to do the same, and further agrees to submit to and abide by all the rules and regulations of said company, and all specific instructions of its executive officers, and to devote sufficient time and energy to its service to qualify himself as good and efficient agent; otherwise this agreement to be void and without effect.

Said party of the first part agrees, in consideration of the above-described service, to pay to the party of the second part a salary at the rate of six thousand dollars per year, in equal monthly installments, payable on the first of each month.

94 Said party of the first part further agrees to pay the rent of a suitable office in the city of Chicago, and pay for such clerical assistance, and office expenses therein, as they may be necessary. The party of the first part agrees to pay all the necessary traveling expenses of the party of the second part when absent from Chicago on the business of said company. It is also understood and agreed that this contract shall continue in force five years from January first, 1876, unless sooner terminated under its own conditions. It is further understood and agreed that either party hereto may terminate this agreement at any time by giving the other three months' previous notice in writing.

(Signed) J. M. HOLCOMB, *Sec'y*, [L. S.]
For the Phœnix Mutual Life Ins. Co.
ALLEN G. FOWLER, [L. S.]
Party of the Second Part.

Signed, sealed, and delivered in the presence of—
GEO. W. MOORE, witness to J. M. Holcombe,
Z. SNILL, as regards—

Copy of Exhibit H, attached to the second deposition of Allen G. Fowler.

I hereby certify that I am in as good health, and as good a risk for life insurance as I was when my policy No. , in the Phœnix Mutual Life Insurance Company, of Hartford, Conn., was taken, and this statement is made as a consideration for the revival of said policy.

Copy of Exhibit I, attached to the second deposition of Allen G. Fowler.

In consideration of the revival of policy No. 92062 by the
95 Phœnix Mutual Life Insurance Company, of Hartford, Conn., on

the life of Allen Whitesel, dated April 8th, 1876, which policy lapsed because of the non-payment of premium due on the 8th day of April, 1877, we hereby represent and warrant that the said Allen Whitsel is now in good health, and that there is nothing in his habits or condition, or family history, which is likely to impair his health or shorten his life. And if this representation and warranty shall prove in any respect untrue said policy shall cease and be treated in the same manner as if it had not been revived.

Witness:

Letter referred to, and attached to A. G. Fowler' second deposition.

[A. C. Goodman, president. J. B. Bunce, vice-president. J. M. Holcombe, secretary. Western Department Phœnix Mutual Life Ins. Co., Hartford, Conn., A. G. Fowler, sup't. Cor. Clark & Randolph str.]

CHICAGO, *Oct.* 9, 1876.

J. M. HOLCOMBE, Esq., *Sec'y:*

DEAR SIR: A person has just called offering to pay the enclosed renewal. I declined to receive it without certificate of health, and drew out the fact that the man was killed by accident two or three days ago.

96 Two notices were sent, the last on Oct. 3rd, to which no attention was paid. Of course I refused to accept the payment. He proposes to return in a few minutes to make a legal tender. Meanwhile I transmit the receipt to you, marked forfeited by non-payment.

Truly yours,

A. G. FOWLER.

Letter referred to, and attached to A. G. Fowler's second deposition.

[A. C. Goodman, president. J. B. Bunce, vice president. J. M. Holcombe, secretary. Western Department Phœnix Mutual Life Insurance Co., Hartford, Conn. Cor. Clark & R'ndolph sts.]

CHICAGO, *Oct'r 9th*, 1876.

J. M. HOLCOMBE, Esq., *Sec'y:*

DEAR SIR: The legal representative of the heirs of Jackson Riddle have just made me a tender of what they said was $250, and read a long statement, which they asked me to admit. I, of course, refused both.

Truly yours,

A. G. FOWLER.

Plaintiff then read in evidence the third deposition of A. L. BICKFORD, which is in substance as follows:

My name is Albert L. Bickford, age, 38; occupation, cashier and book-keeper; residence, Chicago. I am in the employ of A. G. Fowler, as cashier and book-keeper. The books that I have in charge for the company, or for Mr. Fowler, show the business of the company that is at this office. They show about the renewals and payment

97 of premiums, &c., upon policies in the company, the defendant.

We do not keep a book showing the date at which notices are sent to policy-holders of the time when the renewal policies would come due; we notify the policy-holders of the time when they become due. We do not keep any memorandum or entry of any kind of the time of

sending any such notices. That is, we do not have any regular book nor register of such transactions. I have been acting in that capacity two years ago last October, since I came to Chicago, October, 1875. There has been memorandums made of the time of notices of the company sent from our office in some cases. We keep them on account of notices being sent and a change of residence or something of that kind, which would necessitate it, in order to know that we had sent the notices. I can tell when one such notice was sent Jackson Riddles. From a note I made on Piatt, Hubbell & Co.'s letter at the time the renewa's was returned from there, indicating that he had removed to Fowler, Indiana. I sent the notice first to Monticello. They returned the note, stating that he lived at Fowler, Indiana, and I immediately made out a notice and sent to Fowler, Indiana. And I find on the corner of that letter a memorandum in pencil-mark stating that the notice was sent on such a date. I have forgotten the date—the letter from Pyatt, Hubbell & Co. returning renewal will show that. The letter is in evidence. It was attached to my original deposition, and I presume you will find a great many more of such minutes on the letters in the office of like character. I know that there has been several,
98 and I might go on and state why those minutes were made, if you would like me to. I was not in charge of the books prior to Mr. Fowler's comingin to the office. I had no relations to the company before that time. Our custom as to notifying policy-holders when the renewals would become due, and didn't know their residence, was to find it in the books or trace it back to the policy-register if I had to, and find out what the policy-register says. The residences are given on some of the books in the office. I never inquire as to the residence of the parties just before the time when the renewals become due, but assume it is the same as the previous year. I have no recollection, apart from my books, as to the time and place at which Mr. Riddle was notified of the time of payment of the renewal for 1876. I sent him a notice at Fowler, Indiana, I think, in September sometime; I can tell by reference; the book will not show it. If you will show me the letter of Pyatt, Hubbell & Co. I will give the date; it is in evidence; I suppose attached to my former deposition; the minutes is made on a corner of that letter. I sent a notice to him, and sent the renewal to Pyatt, Hubbell & Co. My books show that he resides at Monticello. The first information I had that he had removed from Monticello was in this letter of Pyatt, Hubbell & Co.'s in September; I can't give the date, September, 1876. I believe, I think, that is the date; I won't be certain about the date, but it is that identical letter that gave me the information; they said he had removed to Fowler, Indiana. It might have been Sept. 7th that I sent the notice to Fowler, Indiana. I think I sent one October 4th to Fowler, Indiana, after I had sent the other. I did not send any to any other place after
99 I had sent the one to Fowler, Indiana. The notice specified the premiums, dividend, interest, and cash due; those were the contents of the notices substantially, with the exception of the outstanding notes, that I didn't give Pyatt, Hubbell & Co's relation to the company, as I understood it was that of collecting agency. I had sent them other collections to make for renewals of policies; I can't say how long they had been doing a business of that kind with the company. I sent the renewal notices to them because I knew that they were agents at that point to collect renewals. I knew that that was the collecting agency at Monticello; that is the reason I sent them the renewal there.

I nor Mr. Fowler did not, to my knowledge, have any information that Mr. Riddle didn't live at Fowler, Indiana, either before or at the time of sending the notice, or that he did live at Oxford, Indiana. I don't think I changed his residence on the books when we heard from Pyatt, Hubbell & Co.; I think it still stands at Monticello. We haven't any other book or place to show his change of residence. We have an index; but I don't think it is in the index that is corrected.

My deposition has been taken before in this case at this place. I cannot tell you who it was before; it was about the 27th of February, at this office.

At that time I testified something about an envelope, a card, and a paper purporting to be a notice to Jackson Riddle as to the amount due on his policy of $187.00. I think those papers were attached to my deposition at that time. To the best of my knowledge the statement that I made at that time in regard to those papers was correct.

100 Ques. When did these renewals come into your hands, generally, with reference to the time when they fall due for attention on your part?

Ans. Renewals due in June, for instance, we may receive any time from the 15th to the 25th day of May. Some renewals are due on the first of June, others along to the 10th, and others as late as the 30th. Some renewals we have on hand probably a week, and may be ten days, possibly not so long. If a renewal is due on the 26th day of the month, we are very likely to have it in our hands for thirty days before it becomes due. We have no papers, books, or memoranda in our office or in the office of the company which would show at what time the premiums on Jackson Riddle's policy were paid for the years 1872, 1873, 1874, and 1875, nor what time the premiums were received at the office of the company. I know of no other books having entries in relation to that policy, except what are contained in those books of renewals for those years which I have here. I have no knowledge outside of these books as to the time it was paid in 1872, 1873, and 1874. I was not in the office at that time; I didn't have charge of the books in September, 1875. The only evidence that I know anything about of the premiums being received is this letter, the one referred to in Mr. Fowler's deposition as Exhibit A. I was not in charge of the books at that time; I know nothing about the four promissory notes executed by Jackson Riddle in part payment of the premiums; I don't know where they are; I have not to my knowledge seen those notes; I don't know where the application made by Jackson Riddle for his

101 policy is; I have no copy in my possession that I know of.

Cross-examination:

Ques. Who instructed you to send the renewal receipt of 1876 in the Riddle policy to Pyatt, Hubbell & Co.?

Ans. I had general instructions to send out the notices; Pyatt, Hubbell & Co. are bankers, and that is the only connection they have with the company; as far as I know the only compensation paid to them for collecting these moneys is their exchange. I don't call any other banking institutions to mind at present at Monticello, Illinois, except Pyatt, Hubbell & Co. I say in my deposition that I received a letter which is attached to my previous deposition from Pyatt, Hubbell & Co. also returning this renewal-receipt, and that I noted on that letter where I sent another or second notice to Mr. Riddle. I made that note in pencil; that is the usual way we do when we receive notice that a

policy-holder has changed his residence. I sent Mr. Riddle a notice at the same time that I sent this renewal-receipt to Pyatt, Hubbell & Co. I should think I sent the notice to Mr. Riddle about 30 days before I received the return of this renewal-receipt; it may be more and it may be less, I don't know exactly. I sent the next notice upon receipt of the renewal the same day or the day following; when I filed the letter it might have been the day following, and sent it to Fowler, Indiana, according to what was contained in their letter. The reason I sent it to Fowler, Indiana, was from something contained in their letter. I did not send any other notice to Riddle anywhere until the notice of October 4th. I directed that notice to Fowler, Indiana; in sending these notices, I sent them part paid. I
102 send them in envelopes; besides the address of the party, the envelope contains upon the face of it the imprint of the office in the corner. It contains a direction to "return to A. G. Fowler within," I think, "ten days." I don't rem'ber. I have cognizance of all the mail that comes into the office. Neither of these notices sent to Mr. Riddle were returned by the postmaster. I mailed these notices myself at that time. I made all of the notices and done all of the mailing; carried my mail down to the box. Neither of the above-mentioned notices were received back as returned. One of them was directed to Jackson Riddle, at Monticello, Illinois, and the other two at Fowler, Indiana.

(Witness shown books of 1875, and examined them.) It was necessary for Mr. Riddle to pay, including the interest, less the dividend, $165.41. The premium for that year was $215, the dividend was $79.55, the remainder $29.96; that is, the interest, the remainder between the dividend and the gross premium, was $135.45, the interest 29.96, the total of the remainder of the net premium and interest cash due was $165.41. The premium for the year 1876 was $215, the dividend $79.55, the net premium $135.45, the interest due upon the notes $29.96, the total amount of cash due that year was $165.41. My books show that the cash payments for 1875 and 1876 were just the same. I did not send the notices for 1875. I did in 1876. I didn't receive the premium of 1875. That book explains whether the amount of cash sent in payment of the premium of 1875 corresponds with the amount that the books show was due.

103 Witness is told "the letter says $165.41." That is the cash due in 1875; then the cash due in 1875 and 1876 were just the same. The books do not show that any notes were received in 1875, nor in 1866. The giving of notes as a part of this premium upon this policy had ceased prior to 1875.

The interest on the notes from 1875, and afterwards, would be the same each year. I would say they would be the same with the exception of the change in the law of Connecticut, changing from 6 to 7 per cent., and subsequently changing back. I don't know what year. They are bearing now six per cent. interest. The notes were governed by the law—they were changed. It may be two or three days after receiving the renewal receipts from the company before I send the notice to the parties, generally two days, and we generally receive those notices on or before the 25th of every month, prior to the expiration of the following month. I cannot tell from the books of this office upon what day Jackson Riddle paid his premium to any local agent, any year after the issuance of the policy to the present time. I sent the notice on October 4th, I presume for the same reason that we send all notices after premiums become due. I might have thought he did not

get the former notices, or to remind him of the lapse of his policy. There is no difference between the first and second notices sent and that sent October 4th, the same blanks. On the 9th October I presume Mr. Blair called at the office and wanted to know if we received premiums after they were due. I told him we had. He said he wanted to pay Jackson Riddle's renewal. I turned to my book to look
164 up the renewal, in order to look up the date, and Mr. Fowler says, "When you find the renewal bring it to me." I found the renewal, found when it was due, and carried it to him. He says "It is past due, and you will, of course, require a certificate of health." I asked him if his name was Jackson Riddle. He said, "No." I asked him if Jackson Riddle was in good health. He said Jackson Riddle was dead. I don't recollect what the balance of our conversation was, but I know that it was very brief thereafter. He did not see Mr. Fowler at that time to the best of my recollection. He went away after that first call without seeing Mr. Fowler. I don't think he said anything about making a tender in that first conversation. When he asked me the first question he did not state anything about the condition of Mr. Riddle until after I had gone after the receipt and come back. I think I saw him there but once after that during that day. I am not able to state the time of day that was, but I think in the afternoon. As near as I can recollect, it might have been two or three hours after the first visit, or it might have been more. Mr. Fowler and I did not occupy the same room. People could not have access to Mr. Fowler's room without going through mine. The entrance was the same way, a door between his room and mine. I have an impression that it was about eleven o'clock that he was there the first time. I will not be certain that is the hour, or anywhere near it, but that is my impression, as near as I can remember. I think he was there the last time in the afternoon sometime, it may be three o'clock. I usually go to my
165 dinner from twelve to half past. I am gone from 20 minutes to forty-five. I presume this gentleman might have come into the office. I was at dinner without my knowing it, I suppose. I did not hear all the conversation between him and Mr. Fowler. I heard a part of it. What I did overhear I didn't pay any particular attention to. The gentleman at no time said anything to me about making a tender. His conversation concerning that was with Mr. Fowler. What I know about that is what I heard. I know Mr. William Herron or W. G. Herron. I saw him on or about the 12th day of October, 1877, at Monticello. I had a conversation with him at that time.

(Witness shown paper.)

Mr. Herron was not the agent of the company at the time I had that conversation with him.

We have a custom when we receive premiums, after they are past due, that we require a certificate of good health; we have a form—one of the company's blanks. We require that certificate from the insured; the insured himself is required to make such certificate. We have regular blank forms to be filled out or signed by the insured before we receive the premiums; that is, if we receive them after they become due. We never intend to receive them after they become due without having some assurance of continued good health. It is not our custom to do so, although we have, by a person coming in person, so that we could see them and know that they are the persons. If they are paid by another individual we do not. We always satisfy ourselves when we receive a premium that the party is

106 in good health before we receive it. Our taking them afterwards is an act of grace. There is no extra charge.

The books do not show nor do I know of my own knowledge of Jackson Riddle's ever paying to the company or any agent of the company any consideration directly or indirectly for the taking of a premium after it had become due, nor do I know of any person having done so. If such should be done I would from my position in the office be likely to know it. The renewals receipts themselves I believe contained on the back the warning that local agents were prohibited from waiving forfeitures and collecting premiums after they were due; in fact that is put on almost every document of the company that is issued. I don't think I ever saw one of defendant's renewal receipts that did not contain that notice. I think their life policies, policies just the same as this, contain a notice of it. I am very certain they do at the bottom. I think that is the last clause.

Redirect examination:

I say that none of those notices were returned to the office. I have entire charge of all the correspondence and receipt of letters that come to the office and had at that time, the time of sending out these notices to Jackson Riddle in 1876. Mr. Fowler received his own private letters; they all came through me; the mail was all handed to me and it was carried by me to him; it might have sometimes have been delivered when I was not there, but I am, generally speaking, there. I don't think it is possible the notices might have been returned and I not re-

107 ceived them. Mr. Fowler when he receives a letter always refers it to me; he leaves nothing on his desk. After he opens a letter and sees its contents; it is very seldom that he reads it at all, just simply notices its contents, throws it down and puts it on my desk; I have charge of all correspondence. I don't think it is possible for any letter sent to that office to be returned without my knowledge. If Mr. Fowler had received it and put it into the stove I probably would not have found it, but he probably would not have done that.

I am going on the supposition that he would not do that. I don't think it possible for him to receive a letter without my knowing—an office letter—without my knowing that a letter had been received; still they were sometimes delivered by the carrier in my absence. I made the memorandum that I have spoken of here of the conversation between Mr. Herron and myself immediately on my return from Monticello, I think about the 12th or 13th day of October of last year, 1877. I made the memorandum by the request of Mr. Fowler on the day following or the same day I returned from Monticello. The way I came to make it I sat down to tell him what the conversation had been between Mr. Herron and myself, and said he, "Just reduce it to writing." I did so; wrote it out; it was the day following the conversation. The way I came to have this conversation with Mr. Herron was that I went there for the express purpose of having it; that is for the purpose of talking with him about the matter. I can't say whether that was after this suit was brought or not. I went there for the purpose of

108 ascertaining the facts in relation to this matter. I can't say that at the time I made the memorandum that I knew there was litigation pending or about to occur. I don't know when the suit was brought. I knew, of course, the man was dead, and there was some effort on somebody's part to get something.

I know nothing about the business of the office prior to 1875 or in 1875; in 1876 my instructions from Mr. Fowler was never to receive a premium after it was due unless the party came in person or we had a

certificate of good health; we had a certificate at that time that we used in that way. I do not know when that custom was adopted; not quite recently, unless you call three or four years. Since I have been in the office I know we have taken certificates in such cases. I can't tell whether or not Mr. Riddles ever paid any consideration to the local agent for receiving payment after due or not, nor do I know if such had been received by the company here

Recross-examination:

(Witness shown Exhibit H.)

We have a blank for the purpose of taking a certificate from parties who desire to pay their premiums; after they become past due we use a blank for that purpose; unless the person comes in person or we are satisfied he is in good health we require that certificate.

(Witness shown Exhibit I.)

If the renewal has been returned to the company it is returned to us with this second certificate, Exhibit I attached, and in that case they sign the certificate. They are required to sign that certificate
109 before we deliver the renewal.

Redirect examination:

I can't state how long that has been the rule of the company. I don't know when it was adopted. I know we have taken certificates for premiums of that kind ever since I have been with the company. When the assured presents himself, when he comes to the office in person we take him on our own personal knowledge of good health when we know we don't require a certificate. I can't answer if he presents himself to the local agent and satisfies him or he is satisfied; all I can answer for is ourselves.

Plaintiff introduced in evidence the second deposition of ALBERT L. BICKFORD which had been taken on notice of the defendant, which was in substance as follows: I am employed by A. G. Fowler, who is superintendent of the western department of the Phœnix Mutual Life Insurance Company. My duties assigned to me with reference to the notification of policy-holders as to the payment of their premiums are to receive the premiums provided they are paid within the time the policy is in force; my duty is to notify every policy-holder of the payment of the premiums on the receipt of the renewals from the company. I should think I received the renewal receipts about 30 days previous to their maturity; it might be a little more. By way of notifying Jackson Riddle of the premiums due on policy issued by the Phœnix Insurance Company No. 56960, I first sent a notice to Jackson Riddle at Monticello; also sent a renewal to Pyatt, Hubbell & Co. for
110 collection. On the 6th of September I received a letter from Pyatt, Hubbell & Co. inclosing the Jackson Riddle renewal and informing us that Jackson Riddle lived at Fowler, Indiana, and also containing draft for remittance on another premium and I had one other renewal returned at the same time. The following day I sent a notice to Jackson Riddle at Fowler, Indiana, of the premium due on that policy, stating that he could make his payments at the Chicago office. Those notices when the premium was collected at any other point, for instance by Pyatt, Hubbell & Co., I would put under there "Will be delivered to you by Pyatt, Hubbel & Co.," but in the other notice they are in the regular form: "Will be returned to you or be delivered to you by A. G. Fowler;" we send that direction on the card containing the statement. (Witness shown Exhibit A attached to his deposition.) It is a notice of premium due on 56960, Jackson Riddle, in

the Phœnix Mutual Life Insurance Company. Exhibit A shows the form and contents of the notice sent to Jackson Riddle at Monticello, Illinois, and to Fowler, Indiana.

We have a letter written by Pyatt, Hubbell & Co., the 5th day of September, 1876, which is the letter I hold in my hand, returning the renewal of 56960, Mr. Jackson Riddle, which says he lives in Fowler, Indiana. Letter marked Exhibit B and offered in evidence.

I find a pencil mark upon that letter, "Ans. September 6th," meaning answered, that is in relation to Pyatt, Hubbell & Co's. letter; and I also find directly underneath, "Sent notice to Fowler, Ind., September 7th."

That is a notice of the premium due on the policy. One of
111 them was put on on the 6th day of September and the other one was put on on the 7th day of September, by myself.

The notice was sent on the 7th day of September, 1876, to Fowler, Indiana, addressed to Jackson Riddle in the usual envelope.

(Witness is shown a blank envelope and asked whether or not that was the printed form*ed* used.)

The form might be a little different, but the substance is the same. We have changed the form a little on the envelope, but the form is the same: "Return to A. G. Fowler, if not called for." The imprint is about the same on the outside of the envelope. That letter was never returned.

Letter marked Exhibit C is introduced in evidence. The statement sent September 7th was sent by mail in the usual form. I done up the letter, made up the statement, and I stamped all my letters at that time. It was put into the mail-box at the corner of Clark & Randolph. At that time I always took down my own mail; the boxes I have mentioned as having delivered in are mail-boxes, United States mail, for the reception of letters from parties deposited for mail.

I think it was about the 3rd or 4th of October that I sent another statement to Jackson Riddle. I sent it because it is customary to send a second statement, because the first might have been overlooked, or the party might have forgotten that such a statement had been sent; simply to notify him that his premium was due; that statement was never returned to the office. That second statement was sent simply
112 as a notice, supposing that the party had forgotten in regard to the payment of the premium.

I did not hear Chauncy J. Blair's testimony just given in this case. When he called at the office on the 9th of October he made no offer to me of the premium; he did'nt ask me if I would receive it. He said, "I want to pay the premium on Jackson Riddle's policy." I looked for the renewal, and while I was looking for it, Mr. Fowler says, "When you find the renewal bring it to me," which I did; I said nothing to Mr. Blair on either occasion on the 9th of October, 1876, as to a willingness, nor did I indicate a willingness to receive payment of the premium on the policy on Riddle's life. I did not say to him that I would accept or receive the premium if it was paid now, meaning then, nor anything of the kind. I knew nothing about that the premium had become due until I found the renewal; we have in our possession sometimes a hundred and fifty or two hundred renewals, and it is impossible for one to recollect when a premium is due, even my own I would be very apt to forget unless I referred to the book or the renewal for the date.

Cross-examination:

The notice which I sent to Mr. Riddle, at Monticello, Illinois, was inclosed in a separate envelope from the one in which the renewal receipt sent to Pyatt, Hubbell & Co. was enclosed; the notice and envelope were never returned to my knowledge. Yes, sir; I have mailed one from my office which was returned uncalled for. When it is returned to the office uncalled for my usual course would be to look at the book and see if I had addressed the letter right. If I found
113 I had addressed it wrong, I should address it correctly and send it the second time; if it was addressed right, I should send it back again. I would make no record on my books or a memorandum, on any paper, of the fact that this particular letter had been returned to the office uncalled for. I am able to state several letters sent that were uncalled for; had one returned to-day. I don't know that I am able to state now any letter sent from my office in 1876 that were returned uncalled for; any particular one's; I can't call*ed* to mind any particular letter that was returned in 1876 uncalled for. I can state distinctly that the one of Jackson Riddle's, to Monticello, was not returned. What makes me recollect that that particular letter was not returned as having been uncalled for was the circumstances of the renewal being returned through Pyatt, Hubbell & Co., change of residence of the party, and the instruction that Mr. Fowler had given me in regard to sending notice where the party had changed residence, and I know that we had had some conversation in regard to that same matter. I can recollect of other letters sent from my office in 1876 that were not returned uncalled for; I can cite you a good many, if you wish me to, and give you the circumstances concerning the transaction which caused me to remember that they were not returned uncalled for; I have a distinct recollection in regard to them, aside from and independant of all knowledge or information that my books give.

Redirect examination:

I am positive that if that letter in the Riddle matter had come back I would have changed the address and residence and addressed
114 it over again; I would certainly have known; every letter comes into my hands, and if a letter had been written and returned I certainly should have noticed it. I addressed my letter according to Pyatt, Hubbell & Co's letter, and I didn't know until, I think it was, yesterday, when I looked over the papers, that I had made a note of sending the letter; I had forgotten and it passed my memory until yesterday that I had made the pencil marks on the letters.

But I recollect very distinctly at the present time of making them at that time, on account of the change of residence from what had been stated in regard to making those changes between Mr. Fowler and myself. The fact of Riddle's death in October has nothing to do with my recollection in this case.

Copy of Exhibit A attached to the second deposition of A. L. Bickford.

[Branch office Phœnix Mutual Life Insurance Company, N. E. cor. Clark & Randolph sts., Ashland Bl'k, Chi., Ill.]

Mr. Jackson Riddle:

The premium on your policy, No. 56960, will be due on the 20th day of September, at this office.

STATEMENT:

Annual premium.....	215
Less dividend.....	79 55
Net premium.....	$135 45
Interest.....	29 96
Total cash due	$165 41

Yours respectfully,
ALLEN G. FOWLER,
Supt. Agencies.

Please return this notice and notify the company of any change of address.
Office hours from 9 a. m. to 4 p. m.

115 *Copy of Exhibit B, attached to the second deposition of A. L. Bickford.*

MONTICELLO, ILL'S, *Sept.* 5, 1876.

A. G. FOWLER, Esq.
Supt. Agencies Phœnix Mutual Life Ins. Co., Chicago:

DEAR SIR: Herewith find our #3182 on Com'l Nat., 9.34;—ech. 25—$9.59 for renewal #89926.

We return #55725; sent him notice and he don't respond. #56960; Mr. Jackson Riddle lives in Fowler, Ind.

Yours truly,

PYATT HUBBELL & CO.

(Across the face:) Ans. Sept. 6th. Sent notice to Fowler, Ind., Sept. 7th.

Copy of Exhibit C, attached to the second deposition of A. L. Bickford.

Buff Envelope.

Card in left-hand upper corner:

[Western department, Phœnix Mutual Life Insurance Company, of Hartford, Conn. Return in ten days to A. G. Fowler, supt. cor. Clark & Randolph str's, Chicago, Ills.]

Plaintiff introduced the first deposition of A. G. FOWLER, which was in substance as follows:

116 My name is Allen G. Fowler; am forty-six years old; reside in Chicago, Illinois, and am superintendent of the western department of the Phœnix Mutual Life Insurance Company, of Hartford, Conn. I commenced superintending the western department of this company about the first of January, 1876. During the last half of 1875 I was superintendent of agencies in charge of Western New York and Northern

Pennsylvania. I was ordered by telegraph to meet one of the directors in Chicago the last of July, 1875, and was placed in charge of the Chicago office about the first of August, I think, for the purpose of closing up the books of the former agent. I was requested by the director who telegraphed me to come to the office and look over the books and endeavor to make a settlement with the former agent.

I can't decide upon the powers of a general agent—I was special agent to do what I was directed to do until the 13th of December, then I was appointed superintending agent. I may say further, I have never been appointed by the company a general agent as I understand it, by that name. I understand the functions of a general agent to be, to do the business—to take the place of the principal in the general business of the company. My powers have always been limited to carrying out the special and general directions of the company. Mr. George W. Moore, one of the directors of the company, had general charge of the business of the company at Chicago between August 1st and December 13th, 1875. I don't know of any specified instructions he gave me in relation to the collection of premiums on policies and receipting for the same; he handed me the renewals for the month of August,
117 and I did, with the assistance of the clerk of the former agent, take the usual steps towards their collection. I can only say in regard to her name that she was a Miss Snell. I don't know that anything was said about her being retained as a clerk in my presence. I don't know whether Miss Snell was retained as clerk in the office in pursuance of any agreement, express or implied, with any of the officers of the company at that time; it was under the orders of M. Moore and myself that she performed the duties of clerk in the office. With the exception of two trips to Hartford, the length of which I don't accurately remember, I remained in the office in charge of the former agent's affairs until my present contract was made with the company the 13th of December; I think one of those trips was taken in September, and one was about the first of December. I may have left about the latter part of November. I understood Mr. Moore to be in general charge of the office in Chicago until I took possession under the execution of my contract.

The renewal receipt for September 1875 came into my possession. I don't remember distinctly, but I don't think I countersigned them all. (Witness shown paper.)

This is a renewal and receipt issued by the Phœnix Mutual Life Insurance Company. (The renewal referred to here is marked Exhibit A and attached to this deposition.) I countersigned that renewal receipt. I did not knowingly receive the premium from Mr. Jack-
118 son Riddle directly. A draft was received by me about the first of October from Wm. G. Herron whom I supposed at the time to be the agent of the company, his name appearing as agent upon the books. The draft was payable to his order, and not being endorsed I returned it to him for endorsement, and it was subsequently sent to me properly endorsed. I don't recollect the date of the draft nor by what bank drawn. The books of our office does not show the date of the payment by Mr. Riddle upon his policy for the year 1874. I have examined the books at the request of and with the attorneys for the plaintiff, Mr. Rich, of Holmes, Rich & Noble, and we found the account of this policy marked paid without date. I shall have to explain that the books referred to are the registers of the former solicitor of the State of Illinois, and that I had no knowledge of them or the mode in which they were kept until I took charge of them, as previously testified. I know of no

special regulation in regard to that; the date of the payment of the renewal premium of 1874 on Mr. Riddle's policy should have been noted.

The company don't keep the books of the solicitor, except at the request of the solicitors themselves. There is, I think, upon the books of the former solicitor a column which is, I think, headed simply "date," which is intended to show the time at which the money came into the hands of the general solicitor from his sub-agents, or in cases when the premium was paid personally to the solicitor, the date of its payment would be shown incidentally. That column was not
119 used by our former solicitor for that purpose. I am now informed that there is no column so headed.

I don't know that we ever had any papers or memoranda left in the office by the former solicitor by which the actual date of payment of the renewal premium of 1874 on Mr. Riddle's policy can or could be told. There was a large amount of waste slips of paper of various shapes and sizes which did not appear to have any value, which might have shown the date of the reception of the payment at the Chicago office. I think they were disposed of as waste paper by the janitor, nor within my knowledge and belief is there any books, papers or memoranda in my office now, or has there been, that shows the actual date of the payment of the renewal premiums upon Mr. Riddle's policy for the years 1873 and 1872 by the insured, nor do I know of any such which show the date of the reception by the former solicitor of the annual premium of Mr. Riddle's policy for the years 1873 and 1872. I believe they were collected by a sub-agent, and I know of no memoranda, and have seen none, which gives the dates asked for. The former solicitor of the company said to me that he never authorized the receipt of a premium by one or any of his sub-agents, unless the agent was satisfied in accordance with the rules of the company that the policy-holder was in good health, and that he had directed his agents to notify policy-holders that their policies would be void if their premiums were not paid at maturity, and that these facts were generally understood by his policy-holders. That is all I know about it.

120 As superintending agent in Chicago as to the acceptance of over-due premiums from policy-holders, in accordance with the rules of the company, I have required satisfactory evidence that the policy-holder was in good health at the time the premium was received by me. Very few premiums are received by me personally, but those are my directions to my cashier and book-keeper and local agents, and are in accordance to my statement.

It depends upon the circumstances whether we require the proof of health to be sent to the office at Chicago. If the local agent is in familiar intercourse with the policy-holder from day to day, and knows that he is in good health, the agent's own knowledge is sometimes taken as sufficient evidence; or, if a policy-holder comes personally to the office, and we have seen him from time to time, and we are satisfied from his general appearance that he is in good health, we exercise the option to receive the premium or not in accordance with the rules of the company. Those rules are that at the restoration of the policy, after its having lapsed by non-payment of premium, is solely an act of grace on the part of the company, exercised by the company itself, or through the company by its agents, according to the circumstances, and if any agent was, within my knowledge, or within the knowledge of the company, to receive the premium upon a policy without being satisfied that the party was in good health he would be instantly discharged. It is the custom to restore when the party is in good health,

or where there are special reasons for which the company de
121 sires to discontinue a policy. They always hold the right and claim the right to refuse or restore at their option. I have already stated that the premium for 1875 on Mr. Riddle's policy was paid to William G. Herron, who appeared upon the books as an agent of the company, and I assumed that he acted in accordance with the rules. I had no knowledge, or have I any knowledge, that the premium was paid to him after the date it was due. I don't know where the application made by Mr. Riddle for his policy number 56960 is. It would in the ordinary course of business be in the company's files at Hartford, but it may be in the attorney's hands in St. Joe or elsewhere. I don't know where it is now. In those disputed cases they are sometimes transferred to the attorney, but whether this has or not I don't know. I don't know where it is. I don't know whether there is in the office a record of the answers made in that application. There are some *some* copies of applications taken in Mr. Koon's time there. I did not have these papers examined. I never have examined them. I don't know, there might or there might not be a copy of Mr. Riddle's application. I cannot state what kind of policy, according to the terms used by the company, Mr. Riddle had. I could, if you would show me the paper—if you show me the policy—I can state what kind of a policy it is, but I never have known myself what kind of a policy it was that I remember.

(Policy handed to witness.)

122 It appears to be what is called a straight life policy. My knowledge is by no means complete, but I am under the impression that Mr. Riddle paid his premium on the half-note plan; that is, the half-note is for the first four years only by half-note. But I don't know that, for I have not examined the books for that purpose. My books, I presume, will show if it is a policy under the half-note plan. I don't know where the notes are. I don't know that I know J. G. Blair; I don't remember him. I do not recollect of a gentleman or two gentlemen calling at my office, in the city of Chicago, on or about the 9th of October, 1876, and asking in reference to the payment of the premium of 1876 upon the Riddle's policy, nor do I recollect of seeing any such gentlemen, being in another room; my book-keeper in front room and I in the back room. I heard some inquiry without seeing who it was, some time, I think, in October. I heard the voice but didn't see the person; they were out of my sight.

I don't remember in what terms the inquiry was. I was sitting at my desk in my private room. The circumstances were peculiar, you observe. I was not in sight of the parties at all. I listened to the conversation and, as near as I can recollect it, my book-keeper asked this party at the window if he was Jackson Riddle, and he replied he was not. The book-keeper then asked him if Mr. Riddle was in good health. I think he said he was dead. I don't know what this gentleman first said to my book-keeper. I don't remember the first of the conversation any further than I have stated it. Our custom as to notifying policy-holders of the time at which their renewal premiums will become due is to send out a printed notice of the receipt by us
123 of the renewals from the company, which usually occurs some time between the fifteenth of the preceding month and the first of the month in which they are due; the time varies somewhat. No further notice is sent until the premium falls due, except we are informed of a change of address on the part of the policy-holder; then another notice would be sent to the correct address—notice if the premiums are not

paid for the purpose of giving policy-holders an opportunity to apply for restoration of their policies. Notices are frequently sent on that account at a considerable period after the premiums are due. Of course all the rules of the company are intended to keep up all its desirable risks, and if a man is in good health we desire to give him an opportunity to apply for a restoration of his policy. These printed notices are frequently sent out for that purpose after the premiums are due; they are a copy of the former notice simply. I can't recollect definitely whether the books show the time at which Mr. Jackson Riddle was notified of the time at which his annual premium for 1876 would be due, together with a statement of the cash to be paid. I saw a memorandum, made by my cashier within a few days, as to the time certain notices were sent. I only remember that those memoranda referred to notices sent; they were sent before the premium was due. The memorandum I saw was of notices sent before the premium was due. I don't remember accurately the dates.

124 I think my book-keeper said to me that he sent a copy of the first notice after the premium on Jackson Riddle's policy for 1876 was due, but I have no knowledge from the books or papers of sending notices after it was due. Some time about the 9th of October, 1876, a gentleman came, I am informed it was Mr. Blair, into my office. He said that the parties had asked him to make a tender of the premium; that they had furnished him with no money to do it, and that he wanted to know if I was going to receive it before he offered it to me, and, while it would be possible for to raise the money for a few minutes to make a tender, he could not, or would not, I don't remember which the term was, use it for the purpose of permanent payment, and he asked to be informed whether, if he offered it, I would accept it. I told him, under those circumstances, I would say I would not accept it. He then went out, and at a short subsequent period, whether the same day or the day after I don't remember, he returned with another gentleman and held a paper in his hand, from which he read at considerable length, but the contents of which I don't remember at all, and laid upon my desk a package, which he said, I think, contained $250.00 in money. I understood him to offer me that money in this Jackson Riddle matter. My reply was, "We decline." He also asked me to admit what he read, I think, in the paper, and my answer was, "I decline to admit or receive anything;" in substance, I don't remember the exact words. I understood the purpose of this gentleman was to make me a tender of the amount due upon Mr. Riddle's policy for the year 1876, if I would agree not to receive it.

Cross-examination:

125 I have been directly in the employ of the company since the 1st of March, 1870; previous to that time was in the employ of the general agent at New York City as a special.

The present rules have been in force since I have been connected with the company. They are not to receive the premium of a policy-holder after it is due, except upon satisfactory evidence of good health. The effort the company makes to acquaint its policy-holder with its rules in that respect would be difficult to state in detail, but in many of the documents disseminated by the company, and in various ways, I believe one of the notices on the back of the renewal receipts, already in evidence, reads, "No agent has any authority to receive any premiums, after date of its being due, without special permission from the officers of the company." Notice on the back of the policy, and on the renewal

receipts, and on the papers issued generally by the company, sometimes a brief notice and sometimes more at length—sometimes giving the substance of the rule, and sometimes giving the whole particulars. I have no authority to receive premiums overdue. I am expressly ordered not to do so, except with permission of the company. There is no exception or authority in me to receive a policy. If the renewal receipt is returned to the company, it is necessary to return a certificate of health. If the renewal receipt is in my hands, and I am satisfied the party is in good health, I have received the money. The com-
126 pany have never made any exception to me, and I have taken that course where the renewal receipt was in my hands. They have never given me authority; in fact, my contract expressly provides that I shall not have it. They are usually countersigned upon their receipt from the home office. As the collection in my office, the collection is in the hands of the cashier or bookkeeper, and I usually run through the receipts and countersign them all, as I am frequently absent travelling, and place them in the hands of the bookkeeper to countersign; but at present we have a stamp countersign which the bookkeeper uses. My first remark applied to the time up to the procurement of that stamp, which is an electrotype of my name—a ribbon-stamp, by which they are countersigned. I have never knowingly received any premium and given a renewal receipt after the death of the policy-holder. In my direct examination, by the term policy-holder I mean the party upon whose life the risk is taken. At the time of the receipt of the payment for 1875 I had not investigated the different appointment of agencies in the West, so as to enable me to know whether Herron was still acting as agent at Monticello. I was not personally acquainted with Jackson Riddle or with his handwriting. I don't remember whether Mr. Blair stated the names of any particular parties that he proposed to make a tender for. He read something from a paper. I don't remember what it was; I didn't listen to it attentively. I don't know enough of the conversation between my bookkeeper and Mr. Blair to say whether Mr. Blair informed the cashier in the first
127 instance of the death of Mr. Riddle. My impression would be that he did not.

Copy of Exhibit A, attached to the first deposition of A. G. Fowler.

OFFICE OF PHŒNIX MUTUAL LIFE INSURANCE COMPANY,
Hartford, Conn., Sept 20, 1875.

Policy No. 56960, insuring the life of Jackson Riddle, is hereby continued in force for one year, to wit, until the 20th day of Sept., 1876, at 12 o'clock noon; but in case any note or notes given as part of cash premiums on said policy shall not be paid on or before the maturity thereof, said policy shall at once become void, without notice to the insured or the person for whose benefit said policy is issued, or whomsoever shall then be the lawful holder or owner thereof. And this certificate receipt shall not be valid or in any means binding on this company until the premium, interest, and assessment is paid, as per margin, and this receipt countersigned by A. G. Fowler, Ill.

(Signed) J. M. HOLCOMB,
Secretary.

On margin of receipt:

Annual premium	$215
Less dividend	79 55

Cash part of premium	135 45
Interest on 4 notes	29 96
Excess of notes surrendered over dividend:	
Cash due	165 41
Note in addition for $	

Received the above this 9th day of Oct., 1875.

128 By A. G. FOWLER,
Agent at Chicago, Ill's.

(Indorsement in red ink:)

The insured will please take notice that no receipt for premium on this policy is valid, unless signed by the president or secretary of the company at Hartford, Connecticut, and that no agent has authority to enterline, alter, or otherwise change any policy, or to receive any premium after date of its being due without special permission from the officers of the company.

Copy of Exhibit D, attached to the first deposition of A. L. Bickford.

[Office Phœnix Mutual Life Insurance Company of Hartford, Conn. Assets over $7,500,000.]

CHICAGO, ILL'S, *Oct. 9th*, 1875.

JACKSON RIDDLE, Esq., *Oxford, Ind.:*

SIR: We are in receipt of your favor of the enclosing $165 $\frac{41}{100}$ payment of renewal premium on policy No. 56960, due Sept. 20th, 1875. Herewith we hand you receipt.

Truly, yours,

A. G. FOWLER,
Per L. S.

Please hereafter send draft to this office direct.

129 Plaintiff introduced in evidence the deposition of Mr. CHAUNCY J. BLAIR, which is in substance as follows: My name is Chauncy J. Blair; am 32 years of age; reside in Chicago; occupation commission merchant. I was a member of the firm of Culbertson Blair & Co.; the firm has since dissolved. I was when this transaction occurred. I knew Messrs Chase & Chase, of Lafayette, Indiana, personally and through correspondence; Mr. Fowler & Mr. Bickford, I have never met except in their office, and this occurrence; Mr. H. D. Warner, of Chicago, I know personally, and have for a number of years. I received a dispatch from Chase and Chase, stating that Jackson Riddle had been killed, and that he had an insurance of $5,000 in the Phœnix Life of Hartford, and requested me to call on Mr. Fowler, the agent of the company, and to pay the premium on policy No 56960. He asked me to ascertain the premium due on this policy, and to pay it or to tender them the money in legal tender. I have that original message in my possession. (Witness produces original message about which he has testified.)

In compliance of the request of Messrs. Chase & Chase, I called at the office of Mr. Fowler, at the building on the corner of Clark and Randolph streets, and asked the bookkeeper the amount of the premium due on policy of Jackson Riddle, No. 56960; he stated that there

was $245 less the dividend, I think he said it was, I am not positive about it, less the amount that was due; it was an amount to be taken off from it. It was $79.59, leaving due as premium on the policy
130 about $165.41, I wouldn't be positive as to the exact amount. I asked the bookkeeper if he would receive the premium now, and the bookkeper replied, "Yes, if paid now," that was his reply. He had given me those figures at that time. He took them from the books. I then replied to him "The man is dead." That was my language, "The man is dead," and his answer previous to this was "Yes, if paid now," I have got that in quotation marks as being the exact words he used in reply to my question. I then read this message to him. He then went to Mr. Fowler's room with a book in his hand. They came out of the room together from the adjoining room into the room that I was in, and said they couldn't receive the money; they would have to consult the company, or words to that effect, as a draft had been drawn for the premium due on the policy and not paid. I merely stopped then to ascertain the amount of the premium, not with any view of carrying out the instruction. I did not have the funds to tender; didn't go with that intention, because I hadn't any witness and the conversation that occurred at that time was merely incidental. I afterwards, in the afternoon of the same day, took with me a witness, H. D. Warner, and tendered the sum of $250 legal-tender notes in payment of premium on the policy of Jackson Riddle, and read to Mr. Fowler this message. He declined to receive the money. I asked him if he would acknowledge the tender of the money on the policy, and he declined to do so, stating that if I had my witness that it was not necessary, and that he didn't wish to do anything which would give away any rights which the company might have. I tendered him the money absolutely,
131 with no reservation, and that ended our conversation and I left, and had nothing further to do with it.

I heard part of Mr. Bickford's testimony. He said that Mr. Fowler was present when I asked the question, and that Mr. Fowler asked him to bring him the renewal premium. That is as I understand what he stated. Mr. Fowler was not present and he didn't say anything to Mr. Fowler regarding it until after I told him that the man was dead. I told him that voluntarily. He did not ask me whether the man was in good health or whether I was Jackson Riddle. He gave me the amount due on the premium, and then I told him voluntarily that the man was dead.

He then went to Mr. Fowler; from Mr. Fowler's I went to my office directly. I sat down and on the back of the message from Chase & Chase wrote out the facts, and Mr. Warner and I signed them in order to keep them fresh in our memory, in order that we might not be mistaken in case we were called on to testify in regard to the case. I have the paper and here produce it.

Cross-examination:

I did not know Mr. Jackson Riddle nor any of his relatives, I never saw any policy issued by the Phœnix Mutual Life Insurance Company on the life of Jackson Riddle or any of the papers up to the time of receiving the telegram I have mentioned. I knew nothing of Jackson Riddle nor of his being insured in any company, nor of his relations, nor of Chase & Chase being in any way interested in any policy on Riddle's life. On the 9th day of October, 1876, is the first I ever knew concerning such policy. It was
132 between half past two and three I think, that I went to the office

of Mr. Fowler on October 9th; that was not the hour of my first visit; my first visit was in the morning. I don't know what the hour. I say before twelve. I won't be certain as to the time I was there. From the date I should infer probably it was twelve. After Mr. Bickford had given me all the information I wished in regard to the amount due on Riddle's policy, I then told him before I left the office that he was dead. At the time of the first visit I had no money with me at all, as I did not go with the view of making a tender. I don't know whether Mr. Chase had money with us or not, but my impression is that he did. Chase & Chase had no money, but H. W. Chase, the senior member of the firm, may have had, and I think he did have. I didn't know who was interested in the policy on Mr. Riddle's life at either time I was in the office of Mr. Fowler. I did not purport to make any tender to Mr. Fowler in behalf of Mrs. Riddle or any of the children of Jackson Riddle. I acted as the agent of Chase & Chase, and tendered the amount of the premium due on the policy, stating the number of the policy. At the time of the tender of the money I read the dispatch to Mr. Fowler. I am not certain that I did read it all through to the bookkeeper. I don't think there was any conversation Mr. Fowler and myself concerning Messrs. Chase & Chase. I think we had no conversation further than after Mr. Bickford had gone in to speak to Mr. Fowler in reference to receiving it, except that he said that he couldn't receive the
money. I made no such statement at all to Mr. Fowler, as that I
133 had no money belonging to Chase & Chase to make a tender with.
I had no conversation with Mr. Fowler at any interview, as "that I wanted to know if he would receive the money if tendered," because I did not have the money to give him." I had no conversation with Mr. Fowler about having no money to make a tender with, nor did I say to him that I could obtain money for the purpose of making a tender if it would not be received, nor did I say anything of that kind. There was no conversation between Mr. Fowler or Mr. Bickford and myself about the widow of Jackson Riddle, or his children. I did not purport to represent either the widow of Mr. Riddle or his children. I know nothing about who his heirs were, nor did I know who the policy was payable to.

Plaintiff introduced in evidence the deposition of HENRY D. WARNER, which is in substance, as follows:

My name is Henry D. Warner; residence, Chicago; business, grain merchant. I know C. J. Blair, of the commission firm of Culbertson, Blair & Co. I know Mr. A. G. Fowler, agent of the Phœnix Mutual Life Insurance Co. by sight. I was at Mr. Fowler's office in company with Mr. Blair on or about the 9th of October, 1876. I went there as a witness with Mr. Blair with a tender of this $250 for the payment of this premium, and Mr. Blair tendered him the money. I saw the money counted; saw it was legal-tender money, which Mr. Fowler refused to receive. Mr. Blair asked him if he would acknowledge the tender of
the money, and he said, "You have your witness, and it is un-
134 necessary for me to refuse a tender, or it is unnecessary for me
to say that you did not tender." That is the sum and substance of it. "You have your witness to prove that you did tender, but I do not wish to give away any rights that the company might have." Mr. Blair made an absolute tender, as I supposed. He wished to pay the premium, and tendered him the money; Mr. Fowler said he refused to accept the money; he absolutely refused to accept it. Mr. Blair made a memorandum of the occurence about which I have testified, and I

signed it; that is my signature there on the back. I have the memorandum with me.

Witness produced paper purporting to be on one side the original dispatch, dated at Lafayette, Indiana, October 9, 1876, addressed to Messrs. Culbertson, Blair & Co., requesting them to pay premium on Jackson Riddle policy in Phœnix Mutual Life Ins. Co., signed Chase & Chase, on the other side to be certain memorandum of the occurrence about which witness has testified. This is a memorandum of what I have stated, written by Mr. Blair the same afternoon we were at Mr. Fowler's office after we returned to his office, written by him and signed by him and myself. I know nothing concerning the matters noticed in the second memorandum below my & Mr. Blair's signatures.

Cross-examination:

I did not go to Mr. Fowler's office, except the particular time that I have mentioned. Mr. Blair said nothing to me about an understanding with Mr. Fowler that he was not receive the money.

Copy of Exhibit "E" attached to the deposition of Chauncey J. Blair.

135 No. 182. Dated Lafayette, Ind. Rec'd 11.44 a., at cor. Lasalle and Washington street, Chicago, Ill's. October 9, 1876.

To Messrs. CULBERTSON, BLAIR & Co.:

Jackson Riddle accidentally killed last Friday—had five thousand insured Phœnix Mutual Life, Hartford. Fowler, super'tindent, cor. Clark and Randolph. Policy number, fifty-six thousand nine hundred and sixty. Premium due September twentieth, but last year's premium received October ninth; ascertain how much premium should have been paid; tell agents facts, and offer amount in legal tender; will write.

CHASE & CHASE.

57 paid, C.

Plaintiffs introduced in evidence the first deposition of Mr. ALBERT L. BICKFORD, which, in substance, as follows:

My name is Albert L. Bickford; residence, Chicago; age, thirty-eight; occupation, cashier and bookkeeper; employed by Allen G. Fowler. The books show the business of the western department of the Phœnix Mutual Life Insurance Company. I do not keep a book for Mr. Fowler showing the dates at which notices are sent to policy-holders of the time at which the renewal of policies will become due. We usually notify policy-holders of the time when renewal premiums will become due; that is our intention in all cases. There has been a memorandum made of the notices of the different times at which premiums became due. We do not in all cases keep a memorandum of the time all policy-holders are notified, because it is not required; that I can tell you probably within a day of the time when a notice is sent
136 out from the office from the receipt of my renewals. I can tell you from the date of the renewals from the company's office probable within a day or two of the time the notice was sent from our office. We keep a memorandum in some cases and not in others, on account many times of the change of residence of parties. I send notices in the regular form upon the receipt of the renewals from the company. They are received usually from the 20th to the 25th of the month previous to their being due.

The first duty is finding out the residence, place them upon the renewal register, then send the notices; that usually takes from one to two days after the renewals are copied into the book or registered, and upon the day-book, then they are sent to the different collecting agencies for collection. We keep an index of the residence of all the policy holders, and always means to notify them of the time when their renewal premiums will become due. We always assume the place of residence at which the policy-holder resided when his last payment was made to still be his residence when we send out notices. We have a memorandum showing the time that I sent the notice to Jackson Riddle as to time of payment of his renewal premium of 1876 at Fowler, Indiana. The renewal receipt was sent first to Pyatt, Hubbell & Co., Monticello. I notified him at Fowler, Indiana, on the 7th day of September. The reason I sent the renewal receipt to Pyatt, Hubbell & Co., at Monticello, Illinois, was because I supposed he lived there at that time I sent it. Our books show that he lived at Monticello, Illinois. I learned
137 that he did not live there but at Fowler, Indiana, by the return of the renewal from Pyatt, Hubbell & Co. a letter written on the 5th or 6th of September, stating that Mr, Riddle lived at Fowler, Indiana. Upon that information I sent him a notice at Fowler, Indiana. I sent him another notice subsequently the 7th of September, 1876. I don't think I sent him but two notices, one, I think, about the 7th of September, and another about the 3rd or 4th of October. The second, I might say, was in regular form. It has been our custom to send a second notice the first of every month, those that are not paid, thinking it might be lost or something of that kind, or that they didn't get our first notice. Those notices to Mr. Riddle specified the different items of his then existing account with the company. I don't know that they were marked so as I could identify them, unless the last of them was marked "second notice." We usually mark them "second notice." I can't say that it was marked second notice or not.

Witness is shown envelope post-marked Chicago, Oct. 4th, and a paper purporting to be a notice to Jackson Riddle of the amount due, policy 56960, for the year 1876.

I recognize that envelope and that card. I recognize it from my writing, and I presume that I have seen them before, but judge only from the writing. I recognize my handwriting, and know that I made it out. I don't know that I can swear to it any plainer then to say that that is my handwriting. I can't say whether that is the envelope in which I enclosed one of the notices to Mr, Riddle or not, but I can say that that
138 is one of the notices. I presume that is the envelope in which I enclosed the notice of about October 3rd or 4th. Pyatt, Hubbell & Co. were a collecting agency, and I presume they were collecting agents for the company. I don't know of any contract that Mr. Fowler has made with them. I don't know that he ever made any. I don't know of any appointment that the company has made. I usually sent our renewal receipts to the banks or to different collecting agencies for collection, and this man living at that place, I presume very likely I sent to them of my own accord.

I don't know that Mr. Fowler or myself ever have been notified that Mr. Jackson Riddle did not live at Fowler, Indiana, either before or at the time of sending of the notices about which I have spoken, nor that he did live at that time and before that time at Oxford, Indiana. The only change of residence that I know of is Fowler, Indiana, and I was informed of that by letter from Pyatt, Hubbell & Co. At the

time of sending the renewal to Pyatt, Hubbell & Co. our books showed that he lived at Monticello, Illinois.

(Witness is here shown a paper purporting to be letter of A. G. Fowler, agent Phœnix Mutual Life Insurance Co. to Jackson Riddle, dated October 9th, 1875. I should presume that to be Miss Suell's handwriting; it is an acknowledgment of $165.41 in payment of renewal premium 56960, due September, 1875. This Miss Suell, who I presume wrote this, is the Miss Suell whom Mr. Fowler had in his office, and about whom I heard him testify.

(Envelope, letters, and notice identified by witness marked Exhibit "B," "C," & "D," and hereto attached.

139 I was cashier and bookkeeper for Mr. Fowler in his office as superintendent of western agencies of the Phœnix Mutual Life Insurance Co. on or about the 9th day of October, 1876. I do not know Mr. Blair, of commission firm of Culbertson, Blair & Co. I recollect of the circumstances of a gentleman calling at Mr. Fowler's office, and enquiring of me concerning the payment of the annual premium for the year 1876 due on Jackson Riddle's policy, number 56960.

The gentlemen that you speak of said "I would like to pay Jackson Riddle's premium." I opened the drawer and took out the renewal premiums; Mr. Fowler said, "When you find that renewal premium bring it to me." I found the renewal premium, and found it was due on September, 20th and carried it to him. I returned and asked the gentleman if he was Jackson Riddle. He said that he was not. I then asked if Jackson Riddle was in good health. He said Jackson Riddle was dead. I think that is about the sum and substance of our conversation. I didn't receive the premium. To the best of my knowledge the gentleman then went away. Either that day or the day following—I think it was that same day—the gentleman returned. He had his conversation after that with Mr. Fowler. I can't say what the conversation was. I was in Mr. Fowler's room, and I don't recollect what it was. I don't know as I can trace the conversation so as to give you any definite idea except, one thing; I did hear Mr. Fowler refuse to accept the premium. I can't say that I heard his reason.

140 (Exhibit B & C are, by consent, withdrawn from this deposition, and the same are afterwards introduced in evidence as Exhibit 1 & 2.)

Plaintiffs introduced in evidence the deposition of JOHN M. HOLCOMBE, which is in substance as follows:

My name is John M. Holcombe; age, twenty-nine; residence, Hartford, Connecticut, and am secretary of the Phœnix Mutual Life Insurance Company of Hartford. The register of renewals kept by H. H. Koon, general agent of the company at Chicago, Illinois, and by A. G. Fowler, superintendent of agencies at Chicago, Illinois, for the years 1872, 1873, 1874, 1875, & 1876 are not at this office. I suppose them to be at the office at Chicago, if they are in existence; they have never been at this office, to my knowledge. I have been connected with the company since 1874. (Witness produces application of Jackson Riddle, made at Monticello, Ill., through W. G. Herron, agent of company, for life insurance in said company, and on which said application there was issued to said Jackson Riddle life policy No. 56960, and copy annexed, marked "Exhibit A.")

We have three of the notes given by Jackson Riddle to said company in part payment of his premium on said policy under the half-note plan. (Copies are hereto attached, marked Exhibits B, C, & D.)

The letter of Mr. Herrons written to Mr. Fowler, superintendent of agencies of said company at Chicago, Ills., in the month of September or October, 1875, enclosing draft of $165.41 in payment of Jackson Riddle's premium on his policy number 56960, due Sept. 20th, 1875, and in which letter Mr. Fowler was notified by Mr. Herron that said Jackson Riddle had removed from Monticello, Ill., to Oxford, Indiana, is
141 not here, to my knowledge. It is not the custom of this company to require its agents to send their correspondence to the home office. It is not, therefore, in my power to produce it or any of the other papers named in the notice served upon me, copy of which is hereto annexed, marked "E," except those copies of which are hereto annexed. I don't know whether there is any fourth-premium note of said Riddle now or ever was in existence. If there is any, it would be in the possession of Mr. A. G. Fowler's. The three of which copies are annexed probably came from H. H. Koon, formerly general agent at Chicago in the years when the notes were dated. I don't think the fourth ever came to this office, if there ever was one. I have been in the business of life insurance about eight years and a half. I am familiar with technical expressions and words used in life-insurance companies and in this company. In the case of this company, when policies were issued on the half-note plan, it was the custom to accept one-half of the first four renewal premiums by taking the notes of the insured for those amounts.

The general meaning of the expression "half-note plan" has been that the first four premiums on any policy issued on that plan should be paid one-half by notes. Upon the fifth payment, such dividend as could be afforded was to be applied to the reduction of the full premium.

The rights of a policy-holder are just the same where he declares in his application that he desires dividends to be applied to the reduction of his premiums.

Cross-examination:

Mr. W. G. Herron never was in the employ of the Phœnix Mutual Life-Insurance Company, to my knowledge.

142 The instructions to the agents of the said company in relation to the receiving of premiums are embodied in the printed rules and regulations which *from* part of the contracts made by the company with its agents. A copy of these rules and regulations is hereto attached, marked "Exhibit F." The requirements of the company in regard to receiving premiums after they are due are contained in Exhibit F. Never, to my knowledge, has the company received from any agent any premium after it was due, unless in conformity with those instructions; nor, to my knowledge, has the company or any office of the company ever learned of any deviation from the rules in the Riddle or in any other case; neither the company nor any officer of the company was ever, to my knowledge, advised or knew on what day Jackson Riddle paid his renewal premium for any year, nor, to my knowledge, were the company or any officer of the company ever aware that Riddle did not pay the premiums when they became due.

Redirect examination:

I was not connected with the company at the time of the issue of Riddle's policy.

Plaintiff introduced the deposition of AARON C. GOODMAN in evidence, which is in substance as follows:

My name is Aaron C. Goodman; age, 56; residence, Hartford, and

I am president of the Phœnix Mutual Life Insurance Co.; have been president three years next month. I was general agent of this company in the city of New York for three or four years prior to
143 May 1st, 1873; have been director in the company for ten or fifteen years. I have never seen the registers of renewals kept by H. H. Koon, general agent of the said company at Chicago, Illinois, or by A. G. Fowler, superintendent of agencies at Chicago, Ill., for the years 1872, 1873, 1874, 1875, and 1876, nor are they, to my knowledge, at the home office. I have never made or caused to be made any examination at the home office to see whether they were there or not, because I believed such inquiry to be useless.

I have made such inquiry, and am told that they are not in this office, and have not been since I have been president of the company. I know of but three of the premium notes given by said Riddle to the company in part payment of the premiums on his policy No. 56960, that the company have ever received, which I now hold in my hand, copies of which are annexed to the secretary's deposition, marked "Exhibits B, C, & D." I have no knowledge of any letter being received by A. G. Fowler, superintendent of agencies at Chicago, Ill., in Sept. or Oct., 1875, from W. G. Herron, of Monticello, Ills., in which was enclosed a draft for $165.41, the payment of Riddle's premium due Sept. 20th, 1875, in which letter Mr. Fowler was notified by Mr. Herron that said Riddle had removed from Monticello, Ill., to Oxford, Indiana. I believe the copy of the application of Jackson Riddle for policy No. 56960, annexed to the secretary's deposition, to be an exact copy. The half-note plan used by this company was to receive a note for the even dollars with interest in advance of so much as one-half the
first four renewal premiums, interest on these notes to be paid
144 annually in advance. When a policy-holder declares in his application that he desires dividends to be applied to the reduction of his premiums, where he pays his annual premium, he is allowed the amount of the dividends towards the payment when the remainder is paid in cash.

Cross-examination:

There are not on the half-note plan any dividends paid to policy-holders previous to the payment of the fifth annual premium. If the premium is not paid on or before the day it becomes due, the policy ceases, or, in insurance parlance, lapses, and no agent has the right to revive the policy without the consent of the home office.

The company, nor any office' of the company has never, to my knowledge, received any premium collected by an agent after it became due; don't know whether the company or any agent of the company know on what day Jackson Riddle paid his renewal premium in any year. I suppose on or before the day on which it became due, according to
contract.
145

Questions to be answered by the person whose life is proposed to be insured, and which form the basis of the contract.

1. In whose behalf or for whose benefit is the assurance to be effected?	Name at full length.	Residence.	Occupation.	Relationship to the party to be insured.
	Mary J. Riddle & children.	Near Monticello.	Wife.	Wife & children.

2. What is the full name of the party to be insured? Jackson Riddle. Occupation? Farmer. Residence? Monticello Township, county of Piatt, State of Illinois. Post-office address in full? Jackson Riddle, Monticello, Piatt, Illinois.

3. Has the above-named person an interest in the life to be insured to the full amount now applied for?	Yes.	What amount of assurance is desired?	$5,000.

4. What kind of policy is desired? Regular life plan.

5. How is it desired that the premium shall be paid?	Annually.	½ note.
	Yes.	Yes.

6. How is it desired that dividends be applied? To pay premium, note plan.

7. Where and when was the party whose life is to be insured born?	At Madison County, Ohio.	Year.	Month.	Day.	Age at nearest birthday.
		1823	Dec.	25	48

8. What is the present state of the party's health?	Good.
9. Is the party married?	Yes.
10. Is the party addicted to the habitual use of spirituous liquors or opium?	No.

11. Has the party been vaccinated, or had small-pox, or varioloid?	Been vaccinated.	
12. A. Has the party been acclimated to a southerly climate? B. If so, when and how? C. Has the party had the yellow fever?	A. No. B. C. No.	
13. A. What employments have the party been engaged in? B. Have these employments had any injurious effect on health?	A. Farming. B. No.	
14. Has the party ever had any of the following diseases? Scarlet fever.	Have had scarlet fever.	
15. Has the party had inflammatory rheumatism? If so, when and how often?	No.	
16. Is the party subject to dyspepsia, dysentery, or diarrhœa?	No.	
17. Has the party now, or has he had, an habitual cough?	No.	
18. Has the party ever met with any severe personal injury? If so, what?	No.	
19. Has the party had, during the last seven years, any severe sickness or disease? If so, state the particulars, and the name of the attending physician, or who was consulted and prescribed.	No.	
20. Is the party now afflicted with any disease or disorder of any kind, and if so, what?	No.	
21. State particulars as to the longevity of grandparents. A. On the father's side. B. On the mother's side.	A. Father don't know. B. Father 70.	Mother don't know. Mother 68.
22. Have the parents or brothers or sisters of the party been afflicted with insanity, or with pulmonary, scrofulous, or any other constitutional disease, hereditary in its character?	No.	

23. Are the parents of the party living?	Father.	Age.	State of his health.	Mother.	Age.	State of her health.
24. Are the parents of the party dead?	Father.	Age at death.	Cause of death.	Mother.	Age at death.	Cause of death.
	Yes.	62	Fever.			
25. How many brothers has the party had?	How many are living and their names.	At what ages.	What is the state of their health respectively.	How many have died.	At what ages.	Of what diseases did they die.
4	4	46				
	Harrison.	41				
	John.	39				
	Abner.	34				
	Laben.					
How many sisters?						
3	Mariah.	50		2		
					40	Fever.
					30	Fever.

26. Name and residence of the family physician of the party, or of one whom the party has usually employed or consulted.	J. W. Coleman, Monticello, Ill's.
27. Name and residence of an intimate friend?	C. P. Davis, Monticello, Ill's.
28. Has any application been made to this or any other company for assurance on the life of the party? If so, with what result? What amounts are now assured on the life of the party, and in what companies? If already assured in this company, state the No. of policy.	No.
29. Is the party and the applicant aware that any untrue or fraudulent answers to the above queries, or any suppression of facts in regard to the health, habits, or circumstances of the party to be assured, will vitiate the policy, and forfeit all payments thereon?	Yes.

It is hereby declared that the above are fair and true answers to the foregoing questions, and it is acknowledged and agreed by the undersigned that this application shall form the basis of the contract for insurance, which contract shall be completed only by delivery of policy, and that any untrue or fraudulent answers, any suppression of facts, or should the applicant become, as to habits, so far different from condition now represented to be in, as to make the risk more than ordinarily hazardous, or neglect to pay the premium on or before the day it becomes due, shall and will render the policy null and void, and forfeit all payments made thereon.

Dated this 6th day of September, 1871.

(Signed) MARY J. RIDDLE & CHILDREN.
JACKSON RIDDLE.

In presence of—
(Signed) WM. G. HERRON.

(Printed and written on left margin of page 1 of application:) N. B.—Persons proposing an assurance are desired to answer all the questions, and to affix their signatures in the presence of a witness, previous to transmission to this office.

Exhibit A to J. M. Holcombe deposition.

A true copy.

Attest: G. M. HUDSON.

Recommended by WM. G. HERRON,
Agent at Monticello, Ill's.

(Printed on right margin of page 1 of application:) ☞ Agents should take great care and see that the year of birth and age agree.

Questions, each of which is to be answered by the medical examiner of the company.

☞ It is of course understood that the medical examiner is at liberty to put such other questions bearing upon the case as he may think proper, and that the whole examination will be thorough, exact, and circumstantial.

The medical examiners of this company are respectfully requested to bear in mind that our rates for assurance are predicated on sound lives, and to recommend no others.

1. Name and residence of the person examined.	Jackson Riddle, Monticello T'p, Piatt Co., Ill's.				
2. State the following particulars.	Weight.	Height.	Circumference of the chest.	Figure.	General appearance.
	170	6 ft. in.	40 in.	Erect.	Robust.
3. State the condition of the heart and respiratory organs, as indicated by auscultation and percussion of the chest.	Normal.				
4. A. State the character of the respiratory murmur over the lungs. B. State the character of the respiration. C. State the condition of the organs of respiration, as regards symptoms or signs of disease.	A. Normal. B. C. Normal. Healthy.				
5. A. Describe the character of the heart's action. B. What is the character of its rhythm? C. What is the condition of the heart and blood vessels?	A. Normal. B. C. Normal. Healthy.				

6. A. State the rate and other qualities of the party's pulse. B. Is it uniform, regular, and steady?	A. In a standing posture 72; in a sitting posture 65. B. It is.
7. Is the party habitually free from any tendency to cough, expectoration, difficulty of breathing, or palpitation?	He is.
8. Are the functions of the brain, the muscular and nervous systems in a healthy state?	They are.
9. Are the functions of the abdominal and urinary organs in a like healthy condition?	Yes.
10. Is the party exempt from any predisposition, either hereditary or acquired, to any local or constitutional disease?	He is.
11. Is the party now entirely free from any disease or disorder whatever?	Yes.
12. Do you believe the party to be sober and temperate in all the habits of life?	I do.
13. Have the party's parents, brothers or sisters, been exempt from pulmonary or other diseases hereditary in their nature?	They have.
14. A. Has the party ever had severe injury or illness? B. If so, has it had any effect upon the constitution?	A. No. B.
15. Do you consider the applicant's life safely assurable; and do you recommend that a policy be granted?	I do.

Dated Monticello, Ill's, Sept. 6, 1871.
(Signed)

JOHN W. COLEMAN,
Medical Examiner.

Questions to be answered by the physician of the party to be assured.

The physician is requested to give any additional information which he may possess, even though it be not embraced in the answers to the queries annexed.

1. How long have you known

2 How recently have you attended the party professionally and for what disease?	
3. Is the party now in good health?	
4. Is the party sober and temperate, and has he always been so?	
5. A. Has the party, or his family relatives, been afflicted with pulmonary complaints, scrofula, insanity, or any constitutional or hereditary diseases? B. Is there such a personal or family predisposition?	A. B.
6. Has the party, at any time, been afflicted with insanity, gout, rheumatism, dropsy, palsy, apoplexy, disease of the heart, aneurism, rupture, fistula, spitting of blood, affection of the lungs, or other viscera, or with any organic disease?	
7. A. Are the functions of the brain, nervous, and muscular systems, the lungs, heart, the abdominal and urinary organs in a healthy condition? B. Has the party ever had disease of any of these organs? If so, which? C. Has the party had any serious injury or illness? If so, what effect has it had on the constitution?	A. B. C.
8. Is the constitution of the party healthy, and are the habits and circumstances such as to render the life safely assurable?	

Dated 18 .
(Signed)

Certificate of a friend of the person to be insured.

I certify that I have been personally acquainted with of during the last years, and do believe that h habits of living are temperate, that h is now in good health, and does ordinarily enjoy good health, and that I know of no constitutional infirmity or other circumstances affecting th calculated to make an insurance on h life more than usually hazardous, excepting

Dated at this day of 18 .
(Signed)

(Indorsed:) Copy. No. 56960. Phœnix Mutual Life Insurance Company, of Hartford, Conn. Date of policy, Sept. 20, 1871; sum assured, $5,000. Term of life. Applicant, Mary J. Riddle. Relationship, wife & children. On life of Jackson Riddle. Residence, Monticello, Piatt, Ill's. Occupation, farmer. Age, 48. Place of birth, Ohio. Date of application, Sept. 6, 1871. Premium, $215. Agent, H. H. Koon, at . Received 20 day of Sept., 1871.

☞ Agents are requested not to fill the above blanks.

M. D.
, *Consulting Physician.*

147 *Copy of Exhibit B, attached to the deposition of John M. Holcombe.*

$107.00.] (Copy.) HARTFORD, *Sept.* 20, 1871.

Twelve months after date, for value received, I promise to pay the Phœnix Mutual Life Insurance Company or order one hundred seven dollars, with interest, payable annually in advance, at 6 per cent., it being for past premium due and payable on policy No. 56960 of said company on the life of Jackson Riddle, dated Sept. 20, 1871, which policy and all payments or profits which may become due thereon are hereby pledged and hypothecated to said company for the payment of this note.

$6.42. JACKSON RIDDLE.

(Across the face:) No. 56960. John Henry Brocklesby, notary public.

Copy of Exhibit C, attached to the deposition of John M. Holcombe.

$107.00.] (Copy.) HARTFORD, *Sept.* 20, 1872.

Twelve months after date, for value received, I promise to pay to the Phœnix Mutual Life Insurance Company or order one hundred and seven dollars, with interest, payable annually in advance, at 6 per cent., it being for part premium due and payable on policy No. 56960 of said company on the life of Jackson Riddle, dated Sept. 20, 1871, which policy and all payments or profits which may become due thereon are hereby pledged and hypothecated to said company for the payment of this note.

JACKSON RIDDLE.

(Across the face:) No. 59960. John Henry Bocklesby, notary public.

Copy of Exhibit D, attached to the deposition of John M. Holcombe.

148 $107.00.] (Copy.) HARTFORD, *Sept.* 20, 1873.

Twelve months after date, for value received, I promise to pay the Phœnix Mutual Life Insurance Company or order one hundred and seven dollars, with interest, payable annually in advance, at 7 per cent., it being for part premium due and payable on policy No. 56960 of said company on the life of Jackson Riddle, date Sept. 20, 1871, which policy and all payments or profits which may become due thereon are hereby pledged and hypothecated to said company for the payment of this note.

JACKSON RIDDLE.

(Across the face:) No. 56960. John Henry Bocklesby, notary public.

Copy of Exhibit E, attached to the deposition of John M. Holcombe.

(Copy.)

UNITED STATES OF AMERICA:

In the circuit court for the district of Kansas.

CAROLINE R. DOSTER, MARY J. RIDDLE, Taylor Riddle; Leon H. Riddle, Irma M. Riddle, and Frank Riddle, the three last named being minors, who sue by their next friend, Caroline R. Doster, plaintiffs,

vs.

THE PHŒNIX MUTUAL LIFE INSURANCE Company, of Hartford, Conn., defendants.

To the above-named defendants and your attorneys of record:

You are hereby notified to have and produce upon the trial of the

above-entitled cause, at the next ensuing term of the court aforesaid, the original of the letters, books, and papers herein described so
149 that the plaintiff may read the same in evidence on said trial: The registers of the renewals kept by H. H. Koon, general agent of Phœnix Mutual Life Insurance Company, of Hartford, Conn., at Chicago, Ill., and by A. G. Fowler, superintendent of agencies at Chicago, Ill's, for the years 1872, 1873, 1874, 1875, and 1876; the application of Jackson Riddle made at Monticello, Illinois, through W. G. Herron, agent of the Phœnix Mutual Life Insurance Company, of Hartford, Conn., for life insurance in said company, and on which said application there was issued to said Jackson Riddle life policy No. 56960; the four premium notes given by said Jackson Riddle to said company in part payment of his premiums on said policy under the half-note plan; the letter to A. G. Fowler, superintendent of agencies of said company, at Chicago, Ill., in the month of September or October, 1875, by W. G. Herron, of Monticello, Ill's, in which said letter was enclosed draft of $165.41 in payment of Jackson Riddle's premium on his policy No. 56960, due Sept. 20, 1875, and in which letter Mr. Fowler was notified by Mr. Herron that said Jackson Riddle had removed from Monticello, Ill's, to Oxford, Indiana, May 18th, 1878.

FRANK DOSTER,
Attorney for Plaintiff.

Which notice was duly served upon the secretary of the defendant at Hartford, Conn., on May 24, 1878, and upon the same day upon A. G. Fowler, supt. western agencies, at Chicago, Ill., and said defendant failed to produce any of said documents except such as are in this record.

150 *Copy of Exhibit F, attached to the deposition of John M. Holcombe.*

The attention of agents is called to the following rules and regulations of the Phœnix Mutual Life Insurance Co.:

1. All policies are issued from the home office of the company at Hartford. Agents are authorized to solicit and receive applications for insurance and to forward the same to this office; if accepted policies will be sent to them as soon as possible.

2. No insurance is binding until the premium has been paid. Agents are authorized to receive the premium at any time after the application is completed; but such payment does not bind the company until the policy is received and delivered.

3. Agents are not authorized to receive renewal premiums not past due, except upon renewal receipts. All renewal receipts to be valid and binding must issue from the home office and be signed by the secretary or president. Receipts thus issued must be countersigned by the agent on the day that he receives the premiums and delivers the receipt.

4. If when the premium is past due and not paid the policy becomes forfeited in accordance with the terms, the company may as an act of grace and courtesy renew such policies upon the assured furnishing to them, at his own expense, proofs on an examining physician's certificate showing that he is still a good risk. Under no circumstances is an agent authorized to deliver renewal receipts past due.

5. Agents are not authorized to accept risks of any kind; to
151 make, alter, or discharge contracts; waive forfeitures, or name

any extra percentage for special risks; neither are agents authorized to credit or remit premiums not actually received; and any agent who advances and remits moneys for persons insured, does it upon his own personal and private account.

6. Should there be no regular appointed medical examiner in the neighborhood of the agent, he will employ for examinations some regular practitioner in good standing, and forward a medical examiner's certificate, and report at length his reasons for confidence, and state the prominent facts about him, such as his age, length and extent of his practice, at what college he graduated, whether he is acting for any hospital or charitable society, etc., etc. References to persons in whom the company reposes confidence, as to his standing, are necessary.

7. The fees of medical examiners will be paid whether the application is accepted or declined; but the agent will not recommend an examination unless he believes the case to be good.

On paying the fee the agent must obtain a receipted bill, stating the name of the person examined and the date of examination, number of policy, if issued, and condition expressed if not.

8. Exchange (actually paid) on drafts sent to this office, postage and expressage will be paid or allowed in the agent's account. No charges for printing, advertising, stationery, etc., will be allowed unless expense is made with written permission.

9. No premiums can be collected and no commission can be
152 claimed by any person who has been discontinued as agent.

10. All moneys received by agents on account of the company are a fiduciary trust in the agent's hands, and not to be used for any purpose whatever, but must be promptly remitted by draft to this office.

11. At the close of the month agents will promptly make up their accounts with the company in the blanks furnished, charging themselves with all premiums and interest collected, and all notes received from the company, and credit themselves with their commissions, the postage, exchange, medical examinations actually paid for, the notes, draft (if any) previously remitted on account, and with report remit draft to balance.

12. The account will vouch for the notes included in the same, and the commissions, but vouche's for all other charges, except postage and exchange, must be remitted with the account, together with the draft to balance; otherwise the report will not be considered complete.

13. All policies that have been in agent's hands one month, all renewal receipts past due, and a list of policies and renewals held over for collection, with remarks thereon, must be forwarded with each report.

14. Losses will in all cases be paid direct from the home office (through the medium of the agent). The company reserves the right to decide upon the justness or validity of any claim after full proofs have been presented.

15. Agents are not permitted under any circumstances either
153 to agree or consent to any change in a policy, whether such change relates to beneficiary, or to an assignment, or to any of the conditions expressed in the contract. When applied to by a policy-holder to advise in regard to any change in the contract, the agent should at once transmit a plain statement of facts, and await instructions from the home office.

16. Agents are specially required to use every endeavor to have all policies taken by the parties applying for them, and not to induce parties to make application who will not be likely to take the policy and

pay the premium. Each policy "not taken" costs the company nearly five dollars. Attention to the above points will save thousand' of dollars annually to the company, and strengthen your own hands in procuring business.

17. Agents will make all reports, send all applications, all orders for blanks or circulars, and all letters for instruction, to office, and do all their business therewith.

18. The right to discontinue any agent or agency, at any and at all times, is reserved. A failure to comply with any of the instructions, conditions, and rules of the company will be considered sufficient cause for discontinuing agent or agency.

Plaintiff introduced in evidence the deposition of CHARLES H. LAWRENCE, which is, in substance, as follows:

My name is Charles H. Lawrence; age thirty-two; residence, Hartford; business, insurance; about seven years and a half. I am employed by the Phœnix Mutual Life Insurance Co. as clerk; am
154 one of the oldest clerks, and have been employed, more or less, in all departments of the business. I know nothing of the registers of renewals kept by H. H. Koon, general agent of said company, nor any of a letter written to A. G. Fowler, superintendent of agencies of said company, at Chicago, in Sept. or Oct., 1875, by W. G. Herron, of Monticello, Ill., enclosing draft of $165.41, in payment of Jackson Riddle's premium on his policy No. 56960, due Sept. 20, 1875.

I can state the meaning of the half-note plan as regards the plan of this company, but not generally, only from hearsay.

As I understand it, it means that a note for one-half the renewal premium is accepted by the insurance company.

The rights of a policy-holder in our company who declares in his application that he desires dividends to be applied to the reduction of his premium are, that if there were any dividends they would be applied to reducing the cash payments as they should become due on his policy. I do not know anything of the fourth premium note of Jackson Riddle not found by the secretary.

Plaintiff introduced in evidence the deposition of DUNCAN MCA. WILLIAMS, which is, in substance, as follows:

My name is Duncan McA. Williams; age, forty-six; reside, Fowler, Benton County, Indiana; I am postmaster in the town of Fowler; become postmaster April 1st, 1876; never had any personal ac-
155 quaintance with Mr. Jackson Riddle; am acquainted with Mr. Taylor Riddle; don't remember whether at the time I became postmaster Taylor Riddle had a post-office box or not; I mean in his own name; I knew where his mail went, and all that. He was in the habit of using a particular post-office box, and it is the same box that he is now using, and Taylor Riddle pays the box-rent. I don't remember but that Taylor Riddle has had but the one box ever since I have been postmaster. All the mail matter addressed to Riddle was put in that box; I mean to any person by the name of Riddle. don't remember of my own personal knowledge of any mail coming to this office addressed to Jackson Riddle.

Cross-examination:

I have seen Jackson Riddle. I knew Taylor Ridder in the fall of 1876 as being the son of Jackson Riddle; I think I knew that fact during the lifetime of Jackson Riddle. Jackson Riddle lived in the

town of Oxford, I think, and I saw him at the platform of the depot at Oxford, Indiana. He was a stranger to me, and I enquired who he was, and was then informed; I don't remember of ever seeing him after that time; but would have known him, I think, if I had seen him. It is my custom now, and has been when mail arrives at this office, and the party having no box it, the mail goes into the general delivery. Where mail comes addressed to the member of a family, and that family owning a box, their mail is put in the box. Any letters coming to the post-office during the month of August, September, and October, 1876, addressed to Jackson Riddle, I would have put in Taylor Riddle's
156 box. When letters come into my post-office enclosed in envelopes which have cards on them requesting them to be returned to the sender within any number of days, if not delivered to the person to whom they are addressed, after the period limited in the card expires and the letters remain uncalled for and are not delivered, I return them to the writer. This has been my invariable custom since I took possession of the office. During the months of August, September, and October there was but one mail received each day from Chicago, Illinois, at Fowler, Indiana, and that about two o'clock p. m. I don't know what time it would leave Chicago; about 10 o'clock in the forenoon of the same day, or earlier, I think. The distance from here to Chicago by rail is about 100 miles. The mails from Chicago, Illinois, to Fowler, Indiana, are transferred in the cars which are run upon the railroad from Fowler, Indiana, to Chicago, Illinois, concerning which I testified to, and they were transferred in the same way in the months of August, September, and October, 1876.

Taylor Riddle came once a day to the post-office after his mail as a rule. After the arrival of the mails, either himself or some member of his family generally comes as a rule. All the mails at this office arrive in the afternoon, between the hours two and five o'clock. I don't remember whether Taylor Riddle had any family here during the months August, September, and October, 1876, or not. All the mails during the months August, September, and October, 1876, came between the hours two and five p. m.

157 Redirect examination:

Mr. Riddle himself was in the habit of generally coming for his mail.

Plaintiff introduced in evidence the first deposition of Edward P. Williams, which is in substance as follows.

My name is Ed. P. Williams; age, twenty; residence, Benton County, Indiana; I resided during the summer and fall of 1876 at Fowler, Indiana, and clerked in the post-office; was acquainted with Taylor Riddle at that time; don't remember whether he had a post-office box, or not, during said summer and fall of 1876, or not; I did all the work and business of the office at that time; I was helped sometimes while distributing the mails, and while at my meals by father only, D. McA. Williams any mail coming to the office addressed to the name of Riddle I put into a certain box having the name of Joseph Cuppy on it, and it still has that name on it. All the rent that was paid upon the box while I was in the office was paid by Mr. Taylor Riddle. There was mail come to the address of Mr. Jackson Riddle, and I put it in the box in which Taylor Riddle received his mail.

I don't know what time Jackson Riddle died; neither do I remember of any mail coming to his address before I learned of his death; but I

do remember of mail coming addressed to Jackson Riddle at about the time of or soon after his death. I don't remember of ever forwarding any mail matter addressed to Jackson Riddle from this office to Oxford, Benton County, Indiana. I knew of the death of Jackson Riddle the day after it happened, which was in the fall of 1876.

Cross-examination:

158 During the summer & fall of 1876, I think, I received at this office, directed to Mr. Jackson Riddle, a plurality of letters, not to exceed six. All the letters that I know of were put in Taylor Riddle's box and were delivered with Taylor Riddle's mail; don't remember of any of Taylor Riddle's mail or of any mail put in his box being delivered to any one but him or some member of his family.

I heard all the cross-examination, and heard all the deposition of Duncan McA. Williams read before he signed it; I know nothing to the contrary of the facts testified to by him on cross-examination in said deposition; I might not have answered them in the same words, but in substance I would.

Redirect examination:

I do not know where the majority of the letters addressed to Jackson Riddle came from, nor do I know whether they were forwarded from Oxford, Indiana, to Fowler, Indiana post-office or not.

Copy of draft testified to by Luther D. Hawley.

FARMERS' BANK OF OXFORD,
Oxford, Indiana, Oct. 4, 1875.

165 41/100] [No. 1606.

Pay to the order of Jackson Riddle, esq., one hundred sixty-five 41/100 dollars in current funds.

To WINSLOW, LANIER & CO.,
New York City:

(Endorsed on face:) W. L. & Co., Oct. 14, 1875. Paid.
L. D. HAWLEY, *Cashier.*

159 (Endorsed on back:) Pay to the order of William G. Herron, esq.

JACKSON RIDDLE.

(Endorsed:) W. G. Herron, pay National City Bank N. Y., account of First National Bank of Chicago.

L. J. GAGE, *Cashier.*

(Endorsed:) National City Bank, New York.—Paid.

Plaintiff offered in evidence the deposition of LUTHER D. HAWLEY (to the introduction of which the defendant's counsel objected, for the reason that nothing therein contained was relevant or competent testimony in this case, and for further reason that the draft mentioned in said deposition does not appear to ever have been in the possession of the defendants or any of its agents, which objection the court overruled; to which ruling of the court the defendant then and there excepted), which deposition was in substance as follows:

My name is Luther D. Hawley; age, forty-nine; residence, in Fowler,

Benton County, Indiana. In summer and fall of 1875, I resided in Oxford, same county and State, and was engaged in banking. Was partially acquainted with Jackson Riddle during his lifetime; Mr. Jackson Riddle purchased a draft at my bank, at Oxford, in October 4th, 1875, amount, $165.41. It was drawn on Winslow, Lennier & Co., of New York City, N. Y., payable to the order of Jackson Riddle.

(Endorsed:) To the order of William G. Herron, esq.
(Signed) JACKSON RIDDLE.

(Endorsed:) William G. Herron, pay National City Bank, city N. Y., account of First National Bank of Chicago.
L. J. GAGE, *Cashier.*

(Endorsed:) National City Bank, New York.—Paid.

160 I have the original draft, but cannot attach it to the deposition. I have no control over the draft and have no authority to let it go out of my possession. But I'll attach a copy of the draft to my deposition. I have retired from the bank; the bank has closed its affairs; all the books, papers, and effects of the same are now in the possession of my former partner, who desires that they shall all be kept intact for the time being, and I promised him I would return this draft as soon as my deposition was taken.

Cross-examination:

I cannot answer positively whether Mr. Jackson Riddle ever purchased any other draft at our bank or not.

Plaintiff introduced in evidence the deposition of ORNE TEMPLETON, which is in substance as follows:

My name is Orne Templeton; residence, Fowler, Benton County, Indiana; am a farmer. Was acquainted with Taylor Riddle during the fall of 1876. I was not acquainted with Jackson Riddle. His death occurred on the sixth of October, 1876, in the evening. Had a conversation with Taylor Riddle on the same evening, somewhere along about seven or eight o'clock. I accompanied Mr. Riddle that evening to Lafayette.

Ques. I'll ask you to state what conversation occurred between you and Mr. Riddle on that trip.

(Defendant's attorney objected, because the question calls for a conversation between witness and one of the plaintiffs not claimed to have been held in the presence of the defendant or any of its agents, and
161 therefore inadmis'able for any purpose in this case; the court overruled said objection; to which ruling the defendant then and there excepted, and witness testified.)

Ans. I remembered that Jackson Riddle had a life insurance policy. I asked Taylor in regard to the policy on the way to Lafayette, and he answered me by saying that he had, and that he also *he* had received a notice of one of the premiums being due. He took it out of his pocket and handed it to me to read, but it was so dark in the car that I couldn't read it.

(Defendant moved to strike out said testimony of Orne Templetom, and objection was sustained.)

Cross-examination:

I had seen Mr. Jackson Riddle before his death a dozen times in dif-

ferent places; three or four times in Fowler, Indiana. The first time I saw him here was August 1st, 1876; the second time, a week or ten days after that; the next time, a few days before his death in September. He was three or four times here in town, but don't remember the date. I did not see him the day preceding his death; couldn't say if he was here on or about that date.

He started east on the train on which he was killed, in charge of stock in my place.

No, sir; I don't feel that his going saved my life, nor have I so expressed myself. I said, perhaps it might have been myself if he hadn't gone in my place. I do not remember of any letter or mail coming to the post-office for Jackson Riddle. I don't remember that I read
162 the address of the notice, as the light in the car was so dim that I could not read it. I don't remember that it was a forwarded letter, the time has been so long. Taylor Riddle told me he had got notice out of the post-office. Since I have been on the witness stand giving evidence in this case I have not seen any writings made by Taylor Riddle intended to aid me in my replies to your questions.

Redirect examination:

It is not a fact that the last time I saw Jackson Riddle in Fowler was on or about the 1st day of September, 1876. I was in New York the 1st of September. Mr. Taylor Riddle has never attempted to influence my testimony in any manner in this case.

Recross-examination:

It was either on the 4th or 6th of September that I returned from New York. Was there again the same month. I returned from that trip to Fowler about the fourteenth of September. I think I saw Mr. Jackson Riddle after that; am not positive.

Redirect examination:

On my return from New York on the fourteenth of September, I was home here three or four times during the month, but was only here two or three hours at a time. I know I was in Fowler between twelfth of September and the first of October, 1876.

Plaintiff introduced in evidence the second deposition of E. P. WILLIAMS, which is in substance as follows:

My name is Edward P. Williams; age, twenty-one; residence,
163 Fowler; occupation, farming. In fall and summer of 1876, resided here and clerked in post-office. Was acquainted with Taylor Riddle at that time, he had a post-office box in office at this place at that time, in the summer and fall of 1876. I was in the habit of doing all the work in the post-office with the exception of help at meal-times of my father, D. McA. Williams.

Any mail coming to the office addressed to Riddle I put in Taylor Riddle's box up to the time of my leaving the office. Taylor Riddle paid the rent on that box. I know that mail came to the office addressed to Jackson Riddle, and I put it in the box of Taylor Riddle. I know as well that when Jackson Riddle died as I do that Elizabeth B. Williams is my mother. She is my mother. A letter came for him before he was deceased. Jackson Riddle died on the sixth of October, 1876. I received letters addressed to Jackson Riddle on or before his death. I put the letter in Taylor Riddle's box. I think I delivered it. To the best of my recollection or knowledge, no. I did give the first letter that came addressed to Jackson Riddle to Taylor Riddle. It

was on the day of his death, or shortly before. Part of my last answer might be stricken out. I desire it stricken out. Strike it out. You might strike out "I think." I delivered it to the best of my knowledge or recollection. No; I did not that I remember ever forward any mail matter addressed to Jackson Riddle from our office to Oxford, Benton County, Indiana. Don't know that any letter was forwarded from any place.

164 Cross-examination:

There was but one letter received at this post-office addressed to Jackson Riddle prior to his death that I know of. I have not previously testified that I received three or four letters addressed to Jackson Riddle before his death. I have not heretofore testified to the receipt at our post-office here prior to Jackson Riddle's death or more letters than I have mentioned here to-day. But one letter that I recollect of came to this post-office during the summer and fall of 1876 prior to Jackson Riddle's for him. I have not stated with certainty no other letter could not have come to our post-office during the summer and fall of 1876 and addressed to Jackson Riddles than I have mentioned on which I have forgotten. I do not pretend to say that I have a personal recollection for two years of letters coming to the post-office and being delivered in the ordinary course of business. Yes, I remember letters coming for Jackson Riddle. I do not pretend that I remember all letters that came here to our post-office for Jackson Riddle either before or after his death. I don't think it possible for any letters to have come for Jackson Riddle before his death that I don't remember of. I have conversed with Taylor Riddle about this matter about three times since giving my last deposition, always in presence of some other parties.

Redirect examination:

Taylor Riddle has never attempted to influence my testimony or indicate to me in any manner whatever what my testimony should be in this case. I only received one letter that I remember of at our
165 office before the death of Jackson Riddle addressed to Jackson Riddle.

Plaintiff introduced in evidence the deposition of H. W. DICKINSON, which is in substance as follows:

My name is H. W. Dickinson; age 27; reside in Center Township, in Benton County, Indiana; occupation farmer. Am acquainted with Taylor Riddle, and was in the summer and fall 1876. I at that time lived in Fowler part of the time. Was acquainted with Jackson Riddle during his lifetime, and know when he died. He died on the sixth day of October, 1876, on Friday. I saw Taylor Riddle on the afternoon of October 6th, 1876. I was standing in front of the Summit House.

The balance of this deposition was excluded on the objection of the defendant's, caused for its irrelevancy and being incompetent.

Plaintiffs introduced in evidence the deposition of Mrs. CAROLINE R. DOSTER, which is in substance as follows:

My name is Caroline R. Doster; age thirty-one years; reside Marion Center, Kansas. I was Jackson Riddle's daughter in his lifetime. In September, 1876, I was at the residence of Jackson Riddle, in Benton County, Indiana.

Ques. State whether while there you had any conversation with Jackson Riddle relative to the payment of a premium due by him upon a policy held by him in the defendant's company.

166 (Objected to by defendant's counsel as irrelevant and incompetent and as calling for a conversation between the deceased and one of the plaintiffs at which it is not claimed that either the defendant or any one of its agents was present. The court overruled the said objection, to which ruling of the court the defendant then and there excepted.)

Ans. I had.

Ques. What was that conversation?

(Objected to by defendant's counsel for the same reason last above said. The court overruled said objection, to which ruling of the court the defendant then and there excepted.)

Ans. About the 9th of September, I think, just previous to his leaving home, he spoke to me that he didn't know the exact amount due as the premium increased for a certain number of years, and then decreased for another certain number of years; that he was expecting a notice which we would probably receive in his absence, and desired that if such notice came that I should take it to my brother at Fowler, Indiana, and have him buy a draft and remit the amount to the company at Chicago, Illinois, which I promised to do.

Ques. Where was that conversation had? What were you doing there, and how long did you remain?

(Objected to for the same reasons as above by defendant's counsel. The court overruled said objection, to which ruling of the court the defendant then and there excepted.)

Ans. I had the conversation at Oxford, Benton County, Indiana, which was his residence. I was visiting there and remained
167 until the 2nd day of October, 1876. While I was there no notice of the amount of premium due from him was received to my knowledge. I think if any had been received I would have known it, as I had been given charge of the matter spoken of before, and it would have been my business to inspect the mail received in my father's and brother's absence. I mean by my brother, Taylor Riddle.

(It was made to appear to the court that a written notice to produce at the trial of this cause all the original documents concerning which said Hiram W. Chase testified and gave copies, so that plaintiff might use the same at the trial as evidence, and that such notice was served upon J. M. Holcombe, sec'y of def't, and A. G. Fowler, sup't western agencies, on 18' Nov. 18 , 1878, and defendant failed to produce originals.)

Plaintiff introduced in evidence the deposition of HIRAM W. CHASE, which was in substance as follows:

My name is Hiram W. Chase; residence, Lafayette, Indiana; am an attorney at law; am quite well acquainted with Taylor Riddle; have a slight acquaintance with Mary J. Riddle; have seen Leon H. Riddle, Irma M. Riddle, and Frank Riddle two or three times, but have never seen, to my recollection, Caroline R. Doster. I know the defendant by reputation. I knew Jackson Riddle, late of Benton County, Indiana, deceased, for something over a year prior to his death; have no
168 personal knowledge of his death, but heard of its occurring on the 6th day of October, 1876; I heard of it on the morning following his death.

On Monday the 9th of October, 1876, Ma'y J. Riddle, the widow of

said Jackson Riddle, Taylor Riddle, her son, and Joseph Heath, a brother-in-law, came to the office of Chase & Chase, attorney' at law, of Lafayette, Indiana, of which firm I am the senior member, and brought the policy of insurance, number 56960, for $5,000, in the Phœnix Mutual Life Insurance Company, of Hartford, Connecticut, and requested me, as the attorney of the heirs of the deceased, to take the necessary legal steps to recover the amount of the insurance policy.

(Counsel for defendant objects to all evidence of what witness did or said, in the absence of the defendant or its agents, and wishes this objection to stand to the foregoing and all that may be stated hereafter of that character. The court overruled the objection of the defendant; to which ruling of the court the defendant then and there excepted.)

On the 16th day of October, 1876, I had prepared the affidavit of William S. Vanatta, one of the employers of Mr. Riddle, in whose service he was killed. The affidavit was written by and sworn to before John B. Sherwood, a clerk in the law office of Chase & Chase and a notary public. A letter-press copy of Mr. Vanatta's affidavit upon the subject of the death of said Jackson Riddle is hereto attached as a part of this deposition, marked Exhibit 1.

(Counsel for defendant objects to the introduction of the copies of the proofs of death, because they are secondary, and are not
169 competent evidence for any purpose in this case. The court overruled this objection, and all of the copies read for the purpose of showing compliance of that condition of the policy sued on and as proof of the death of Jackson Riddle; to which ruling of the court the defendant then and there excepted and still excepts.)

On the 17th day of October, 1876, I myself prepared the affidavits of Abram P. Canahan and Joseph Cuppy (sometimes called Josephus Cuppy), of Benton County, Indiana, in reference to the death of Jackson Riddle, which affidavits were subscribed and sworn to before me by said Canahan and Cuppy, and copies of the same were immediately made by said Sherwood under my direction, which copies, marked Exhibit 2 & 3, are hereto attached as a part of this deposition.

At the time said affidavits were made before me I was a notary public, duly qualified, for said county of Tippecanoe and State of Indiana.

On the 28th day of October, 1876, said Sherwood, by my direction, prepared the affidavit of William W. Vinnedge, M. D., then the coroner of said Tippecanoe County, which was sworn to by said Vinnedge in my presence before said Sherwood as notary public as aforesaid. Said Sherwood, by my direction, prepared a copy at the time of said Vinnedge's affidavit, which is hereto attached as Exhibit 4 and made a part of this deposition.

The copies of Canahan's, Cuppy's, and Vinnedg's affidavits, which are hereto attached, were all compared by said Sherwood and myself
170 with the originals and found to be correct. On the 28th day of October, 1876, the original affidavits of said Vanatta, Canahan, Cuppy, and Vinnedge were enclosed in a letter and sent by mail to A. G. Fowler, esq., general agent of the Phœnix Mutual Life Insurance Company, corner of Clark and Randolph streets, Chicago, Illinois. The letter was dictated by myself, but is in the handwriting of said Sherwood. A letter-press copy of said letter, which accompanied said affidavits, is taken from the letter-book of said Chase & Chase, an' is attached to this deposition as Exhibit 5.

(Counsel for defendant objected to the introduction of letter-press copy of said letter as incompetent in itself, and as not competent to charge the company with the statements made therein. The court

overruled said objection, to which ruling the defendant then and there excepted and still excepts.)

I see upon the letter-press copy at the head of the letter these words written in ink by Mr. Sherwood at the time: "General agent, Phœnix Life Insurance Co." My best recollection is, that those words were omitted from the original letter until after the letter-press copy was taken, and am not positive that they are in the original, but all the rest of said Exhibit 5 is an exact copy of said original letter of the 28th of October, 1876.

The original affidavits and said original letter of October 28th, 1876, were enclosed in an envelope directed to A. G. Fowler, esq., general agent Phœnix Mutual Life Insurance Co., corner Clark & Randolph streets, Chicago, Ills., postage prepaid, and sent by me to be de-
171 posited by Mr. Sherwood in the post-office at Lafayette.

The envelope had in the upper left-hand corner a printed direction that if the same was not called for in ten days that it should be returned to Chase & Chase, attorneys at law, Lafayette, Indiana. The letter and affidavits were never returned to Chase & Chase to my knowledge.

Mr. Fowler did not answer said letter of October 24th, 1876, and on the 6th day of November, 1876, said Sherwood, by my direction and at my dictation, wrote a letter addressed to said Fowler upon the subject of said affidavits and of said letter of the 28th of October, 1876, a letter-press copy of which, marked Exhibit 6, taken from Chase & Chase letter-book, is made a part of this deposition.

(Counsel for defendant objected to the introduction of letter-press copy of said letter of 6th November, 1876, for same reasons as last stated. The court overruled said objection, to which ruling of the court the defendant then and there excepted and still excepts.)

The original letter of November 6th, 1876, was mailed to Mr. Fowler, and on or about the 12th day of November, 1876, the firm of Chase and Chase received from said Fowler the only letter written by him, to my knowledge, upon the subject of the Riddle policy and the claim of his heirs under it upon the company. This letter, which I understood to be an answer to said letters of October 28th and November 6th, 1876, is attached to this deposition as Exhibit 7. The letter-press copies of said letters of Oct. 28th, 1876, and November 6th, 1876, are perfect copies except as above stated, and except also that the original
172 letters have the following printed matter at the heads thereof:

"HIRAM W. CHASE. FRED. S. CHASE.

"OFFICE OF CHASE & CHASE,
"ATTORNEYS AT LAW,
"*Lafayette, Ind.*, 187 ."

Shortly after receiving the letter of November 11th, 1876, from Mr. Fowler, and, I think, during the latter part of November, 1876, though I cannot fix the precise date, I was in Chicago, and went to the branch office of the Phœnix Mutual Life Insurance Company, on the corner of Clark and Randolph streets, and asked to see Mr. Fowler, the superintendent of the western department of the Phœnix Mutual Life Insurance Company. A gentleman, some forty-five or forty-eight years' old, something over above the medium size, in charge of the office, was pointed out to me by a clerk as Mr. Fowler, and on my accosting him and giving my name, answered himself as Mr. Fowler, having the management of said Phœnix Mutual Life Insurance Company's business.

I had no personal acquaintance with him, but he was in charge of the office and seemed familiar with the claim of Jackson Riddle's heirs against said insurance company. I asked him if the proofs of death as shown by affidavits of Vannatta and others had been received. He said he was not there to make any admissions, and that he should not make any denials upon the subject of the proofs. He said he
173 was very glad to meet me socially and form my acquaintance. He tendered me a cigar, and asked me to sit down and enjoy myself, which I declined, on the ground that I never smoke. He said that if I came there to talk about any liability of his company upon the Riddle policy he was not prepared to listen to me. Having no other business than to talk about the Riddle policy I bade Mr. Fowler good afternoon, and left the office.

(The court allowed the foregoing testimony of Hiram W. Chase, including the exhibits to his deposition, for the purpose only of showing or tending to show that proof of death had been furnished to defendant in accordance with the 'rms of policy.)

Cross-examination:

I had no money in the hands of Chauncy J. Blair or with any firm in Chicago of which he was a member on or about October 9th, 1876, nor did he or they then owe me anything. I have no personal knowledge whether Jackson Riddle had funds in his hands to pay the premium due defendant on the policy in question prior to his death or not. I was informed by said Mary J. Riddle, widow, and Taylor Riddle, son of said Jackson Riddle, on said 9th day of October, 1876, that said Jackson Riddle had the money provided for to pay the premium due in the preceding September, but that it had been loaned to Mr. Doster, his son-in-law, of Kansas, who had promised payment, and from whom he was daily expecting to receive it. This is all the information that I had upon the subject.

174 I remember of seeing two or three notices from the company to Jackson Riddle of amount of premium due September, 1876, on this policy, the first dated about the time the premium became due. One dated very nearly the time of Mr. Riddle's death; I think it was received after his death. If I saw a third notice, of which I am not positive, as the papers have been out of my hands for some twenty months, it was dated between the 20th of September, 1876, and the 6th of October, 1876. I saw one and perhaps two of said notices on Oct. 9th, 1876, and I saw one brought to my office some days afterwards by Taylor Riddle, which I understood to have been received after Jackson Riddle's death. The first notice that I saw was among the papers (policy renewal receipts and notices) handed me by Mrs. Riddle when she and her son and Joseph Heath came to my office on the 9th day of October, 1876. I have looked at the card marked Exhibit A, and it does correspond with the notices I have referred to. I cannot be positive about the amounts as indicated by the figures, but I believe them to be substantially correct.

Re-examination:

I have known Mr. Chauncy J. Blair for eight or ten years quite well, and have had a great many business transactions with the firm of which he was a member, some of them involving many thousand dollars money, and I had on several occasions previously, when in Chicago, and having occasion to use money immediately, procured the same from him, to be refunded on my return to Lafayette, and upon one
175 occasion a few months prior to October 9th, 1876, procured from

him something over $3,000, which I used for other parties and refunded on my return to Lafayette. When I telegraphed him on the 9th of October, 1876, to tender the premium due on the 20th of September preceding Mr. Joseph Heath was in my office and assured me that he would send the money to Chicago immediately to reimburse Mr. Blair if the tender was accepted. Mr. Heath was a man of ample means. I also had means of my own to reimburse him.

Copy of Exhibit 1, *attached to the deposition of Hiram W. Chase.*

STATE OF INDIANA,
Tippecanoe County, ss:

William S. Van Natta, being duly sworn, upon his oath says that he was well acquainted with Jackson Riddle, formerly of Piatt County, Illinois, but late of Benton County, Indiana, deceased; that such acquaintance existed about the space of one year; that on Friday, the 6th day of October, 1876, the said Jackson Riddle was employed by the firm of W. S. and J. H. Van Natta, cattle shippers, of Tippecanoe County, Indiana, of which firm affiant is a member, to take care of twelve car loads (192 head) of fat cattle from Templeton, Benton County, Indiana, to the city of New York; that affiant accompanied said Riddle with the cattle as far as La Fayette, Indiana, where they arrived about 2 o'clock p. m.; that said Jackson Riddle left the city of La Fayette with said cattle on a freight train over the La Fayette,
176 Muncie, Bloomington Railroad about or a little after three o'clock in the afternoon of said day; that there was no caboose attached to the train and said Riddle rode upon the engine; that when said train had proceeded four or five miles it collided with a work train on said railroad, and in the collision said Riddle was crushed to death; that affiant reached the place of collision between six and seven o'clock in the evening of said day and before the body of said Riddle was extricated from the wreck. The affiant saw his body in the wreck, but it was not extricated until after affiant left; and that affiant saw the body next on Saturday, the seventh of October, 1876, at the rooms of Creager & Falckerner, undertakers, in the city of La Fayette, where it was coffined. Affiant further says that the said Jackson Riddle was during affiant's acquaintance with him a man of temperate habits up to the time of his death. Affiant further says that he has no interest in the estate of said Jackson Riddle or in the claim of his wife and children upon the Phœnix Life Insurance Company, of Hartford, Connecticut, for the death of said Jackson Riddle; and that he believes said Jackson Riddle, who was so killed, was the same person who was insured by that name by policy No. 56960 in said company for $5,000.00.

W. L. VAN NATTA.

Subscribed and sworn to before me, a notary public in and for said county of Tippecanoe, this 16th day of October, 1876.

JOHN B. SHEREWOOD,
Notary Public.

177 *Copy of Exhibit* 2, *attached to the deposition of Hiram W. Chase.*

THE STATE OF INDIANA,
Tippecanoe County, ss:

Abram P. Carnahan, being sworn, on his oath says that he is a citizen of Benton County, in said State, and has been for more than twenty

years last past; that he was well acquainted with Jackson Riddle, late of said Benton County (but formerly of Piatt County, Illinois), deceased; that said acquaintance commenced in the spring 1875, when he first came to the State of Indiana, and continued to the time of his death on the 6th day of October, 1876; that affiant and said Riddle both resided in the town or village of Oxford during said period; that he last saw said Jackson Riddle alive on the morning of Friday, October 6th, 1876; that he was then about to start to New York with a train of fat cattle for W. S. and J. H. Van Natta; that on Saturday morning, the 7th of October, 1876, the body of said Jackson Riddle was received at Oxford on the train from La Fayette, Indiana, in a coffin; that on the afternoon of last said day affiant officiated as undertaker, and went to the late residence of said Jackson Riddle and helped carry the coffin containing his dead body to the hearse, and accompanied the same to the grave-yard at Oxford and saw the said body interred, the funeral services being conducted by the Rev. Mr. Taylon, of Fowler, Indiana; that while affiant did not see the body of said Riddle in said coffin he saw his wife, children, and friends present at the funeral,
178 and has no doubt that it was the dead body of said Jackson Riddle, who was the person insured by that name in the Phœnix Mutual Life Insurance Company, of Hartford, Connecticut, for $5,000, by policy No. 56960.

(Signed) ABRAM P. CARNAHAN.

Subscribed and sworn to before me this 17th of October, 1876.

[NOTARIAL SEAL] H. W. CHASE,
Notary Public.

Copy of Exhibit 3, attached to the deposition of Hiram W. Chase.

THE STATE OF INDIANA,
Tippecanoe County, ss:

Joseph Cuppy, being duly sworn, says that he is a citizen of Benton County, Indiana, and has resided in Oxford, in last said county, for nearly six years last past; that he was well acquainted with Jackson Riddle, formerly of Piatt County, Illinois, but late of said Benton County, deceased; that affiant's acquaintance with said Jackson Riddle commenced in the month of March or April, 1875, and continued to the time of his death; that on Friday, the 6th day of October, 1876, at about half-past eight or nine o'clock in the morning of that day, affiant saw said Jackson Riddle near the station-house of the La Fayette, Muncie, Bloomington Railroad, in said Oxford; he had his overcoat on his arm and said he was about to start East with a train of cattle for the firm of W. S. and J. H. Van Natta; that said Jackson Riddle started off in the direction of Templeton station, two miles east
179 of Oxford, and that was the last that affiant saw of him alive; that on Saturday morning, October 7th, 1876, the dead body of said Jackson Riddle was received at Oxford on the cars from La Fayette, and affiant assisted in removing the same to his residence in Oxford, where the coffin lid was removed and affiant saw and recognized the said dead body as that of said Jackson Riddle, who was the same person who was insured by that name in the Phœnix Mutual Life Insurance Company, of Hartford, Connecticut, for $5,000. Affiant further says that during the *the* entire time he was acquainted with said Jackson Riddle he was a strictly temperate man.

(Signed) JOSEPH CUPPY.

Subscribed and sworn to before me this 17th of October, 1876.
[NOTARIAL SEAL.] H. W. CHASE,
Notary Public.

Copy of Exhibit 4, attached to the deposition of Hiram W. Chase.

STATE OF INDIANA,
Tippecanoe County, ss:

William W. Vinnedge being duly sworn, upon his oath says that he is a practising physician and surgeon, residing in the city of La Fayette, Indiana, and has been such practising physician and surgeon for more than seven years last past; that he is and has been coroner of said county of Tippecanoe for four years last past; that on Friday, October 6th, about six o'clock in the evening of said day, he was called as such coroner to hold an inquest upon the body of Jackson Riddle; that
180 he visited the place where a collision had that day occurred on the La Fayette, Muncie and Bloomington Railroad, about four miles distant from La Fayette; that he empannelled a jury and looked at the body of said Riddle, and, having important business, entrus'ed the further investigation to E. M. Weaver, esq., as his deputy. Affiant further says that he had no acquaintance with said Riddle, but from the appearance of the body believes he came to his death by being crushed in the said collision. He was jammed up against or close to the boiler-head, near the door of the furnace, and was partially covered with large blocks of stone-coal from the tender. The body was quite dead, but had not been extricated from the wreck.

(Signed) W. W. VENNEDGE.

Subscribed and sworn to before me this 28th day of October, 1876.
[NOTARIAL SEAL.] JOHN B. SHEREWOOD,
Notary Public.

Copy of Exhibit 5, attached to the deposition of Hiram W. Chase.

OCTOBER 28TH, 6.

A. G. FOWLER, Esq.,
General Agent Phœnix Mutual Life Insurance Co.,
Corner Clark and Randolp' streets, Chicago:

DEAR SIR: On behalf of Mary J. Riddle, widow, and Narcissa C. Doster, Taylor Riddle, Leon H. Riddle, Irma M. Riddle, and Frank J. Riddle, children of Jackson Riddle, who was insured by policy
181 No. 56960 for $5,000, in the Phœnix Mutual Life Insurance Company, of Hartford, and who was accidentally killed on the 6th inst., we enclose you the affidavits of William S. Van Natta, Abram P. Carnahan, Josephus Cuppy, William W. Vennedge, which make complete proof of the death of said Jackson Riddle.

(We presume there can be no doubt about the liability of the company except that growing out of the failure to pay the premium on the 20th of September last; and upon that question we are clear that the equity, and we believe that the law, is with the widow and children.

It had been the custom of the company to give Mr. Riddle indulgence after the premium became due, as we understand, from the time he was first insured, and he relied upon that indulgence. The premium due on the 20th Sept., 1875, was paid and accepted without objection on the 9th of October of that year, and Mr. Riddle had made arrangements for the money, which he

The portion in parenthesis is ruled out by the court.

was daily looking for when he was killed, and which afterwards came. When the premium was tendered on the 9th inst. a willingness was expressed to accept it then, in accordance with a notice sent to Mr. Riddle on the 4th inst., until Mr. Blair, who acted in accordance with our instructions, apprised you of the death of Mr. Riddle. So that it seems to us the time of payment was waived.)

We desire you to lay these papers before the proper officers of the company, and inform them at what time the annual payments
182 have been made. As soon as you are advised, please inform us of the decision of the company.

Respectfully,

CHASE & CHASE.
S.

Copy of Exhibit 6, attached to the deposition of Hiram W. Chase.

NOV. 6TH, 6

A. G. FOWLER, Esq.,
General Agent of the Phœnix Mutual
Life Insurance Co. of Hartford, Conn., Chicago:

DEAR SIR: On the 28th ult. we enclose you affidavits in the case of the widows and heirs of Jackson Riddle, deceased, against your company, asking you "to lay the papers before the proper officers of the company," and to inform us of their decision. We did not expressly ask you to acknowledge receipt of the papers, but presumed you would do so. Will you please, therefore, acknowledge their receipt if the' came to your hands?

Respectfully,

CHASE & CHASE.

EXHIBIT 7.

[A. C. Goodman, president; J. B. Bruce, vice-president; J. W. Holcombe, secretary. Branch Office Mutual Life Insurance Co., cor. Clark and Randolph str's, Chicago, Illinois. Allen G. Foster, sup't western dep't.]

183 CHICAGO, *Nov.* 11, 1876.

Mess. CHASE & CHASE,

GENTLEMEN: We believe that there can be no possible claim upon the company under the Riddle policy. When the premium became due and was unpaid the policy ceased by its own terms, and no act of mine could restore it. If the premium was tendered to me after Riddle's death it would be absurd to suppose that the policy was in force from the time it lapsed until the premium was tendered, and under no other supposition could any claim exist.

Truly yours,

A. G. FOWLER.

Plaintiff introduced in evidence the deposition of JOHN B. SHERWOOD, which is in substance as follows:

I was a student at law, Messrs. Chase & Chase, on the 28th day of October, 1876. Mr. Chase prepared the affidavits of W. W. Vinnedge, M. D. Williams, S. Vannatta, Abram P. Carnahan, and Josephus or Joseph Cuppy; these affidavits were deposited in the post-office, enclosed in a letter written by me at Mr. W. H. Chase's dictation to A. G. Fowler,

general agent Phœnix Mutual Life Insurance Company, at Chicago, Illinois. The letter was addressed "A. G. Fowler, esq., general agent Phœnix Mutual Life Insurance Co., corner Clark and Randolph streets, Chicago, Ill's." The postage was prepaid and said letter was deposited by myself in the post-office at La Fayette, Ind., on the 28th of October, 1876.

184 Plaintiff introduced in evidence the policy sued upon, of which the following is a copy:

185 PHŒNIX MUTUAL LIFE INSURANCE COMPANY.

Age, 48 years.] [Engraving.] [Annual premium, $215.00.

No. 56960.] HARTFORD, CONN. [$5,000

Term, life.] [Annual payments.

This policy of assurance witnesseth that the Phœnix Mutual Life Insurance Company, of Hartford, Conn., in consideration of the representations made to them in the application for this policy, and of the sum of two hundred and fifteen dollars and cents, to them duly paid by Mary J. Riddle, wife & children, and of the annual payment of a like amount on or before the twentieth day of September in every year during the continuance of this policy, do assure the life of Jackson Riddle, of Monticello, in the county of Piatt, State of Illinois, in the amount of five thousand dollars for the term of h natural life.

And the said company do hereby promise and agree to pay the amount of the said insurance at their office, in the city of Hartford, Conn., to his wife & children, or their executors, administrators, or assigns, in ninety days after due notice and proof of the death of the said party whose life is hereby insured, any indebtedness to the company on account of this policy being first deducted therefrom.

And the said company do further promise and agree, that, if after having received not less than three (3) annual premiums, this policy shall be surrendered while in force, a new policy will be issued for the whole amount of even dollars of premiums received by the said company (subject to any indebtedness on account of premiums), without subjecting the assured to any subsequent charge, except the interest annually in advance, on all indebtedness on this policy.

This policy is issued and accepted by the assured upon the following express conditions and agreements:

First. If the said Jackson Riddle shall at any time during the continuance of this policy, without the consent of the said company, previously obtained in writing, visit any part of the western hemisphere lying between the tropics, or of the eastern hemisphere between the 36th parallel north and the Tropic of Capricorn; or engage in the manufacture or transportation of gunpowder or fireworks, or in submarine operations or in any military or naval service whatsoever (the militia not in actual service excepted), or in case he shall die by the hands of justice, or in, or in consequence of a duel, or of the violation of any law of these States or of the United States, or of any other country which he may be permitted under this policy to visit or reside in, or if any of the declarations or statements made in the application for this policy, upon the faith of which this policy is issued, shall be found

in any respect untrue, or in case any note given for the cash part of premium on this policy shall not be paid at maturity, or in case the interest is not paid annually in advance on any notes which may be given for any portion of the premiums on this policy, then, and in every such case, this policy shall be null and void.

Second. If the said premiums shall not be paid at the office of the company, in the city of Hartford, Conn., or to an agent of the company, on his producing a receipt, signed by the president or secretary, on or before the date above mentioned, then in every such case, the said company shall not be liable for payment of the sum insured or any part thereof, and this policy shall cease and determine.

Third. In every case when this policy shall cease and determine, or become or be null and void, all payments thereon shall be forfeited to this company.

This policy to take effect when countersigned by H. H. Koon, agent at Chicago, Ills.

In witness whereof the said Phœnix Mutual Life Insurance Company, of Hartford, Conn., have by their president and secretary signed and delivered this contract this twentieth day of September, one thousand eight hundred and seventy-one.

(Signed) I. F. BURNS, *Secretary.*

E. FESSENDEN, *President.*

Countersigned this day of 18 .

, *Agent.*

A true copy.
Attest:
G. M. HUDSON.

PROOFS OF DEATH REQUIRED.

1st. A certificate from the physician who attended the party during his last sickness, stating particularly the nature of the disease, its duration, and the time of death.

2nd. A certificate of a disinterested acquaintance of the deceased, certifying to the time and fact of his death, and that he or she was the person insured by that name in this company.

3rd. A certificate from the undertaker, sexton, or clergyman who officiated at the funeral of the deceased and saw the body interred.

4th. A certificate from some intimate friend of the deceased, respecting the continuance of his temperate habits up to the time of death.

These several certificates should be sworn to before a magistrate or other officer qualified to administer an oath or affirmation.

Also a certificate from the secretary of state or clerk of court that the magistrate who administered the oath or affirmation is duly authorized to do so.

The insured will please take notice that no receipt for premium on this policy is valid unless signed by the president or secretary of the company, at Hartford, Conn., and that no agent has authority to receive any premium without first presenting a regularly signed receipt from the president or secretary; or to interline, alter, or otherwise change any policy, or to receive any premium after date of its being due, without special permission from the officers of the company.

(Indorsed:) Copy life policy No. 1. No. 56960. The Phœnix Mutual

Life Insurance Company of Hartford, Conn. Insurance on the life of Jackson Riddle in favor of his wife & children. Amount, $5,000. Date, September 20th, 1871. Term of life: Annual payment, $215.00; policy, $1.00.—$216.00. Register, . Page . National Bank Note Co., New York.

186 Plaintiff' introduced as a witness on their behalf Mr. FRANK DOSTER, who testified as follows:

Q. Mr. Doster, you may state where you live.

Ans. I live at Marion Centre, Kansas, Marion County.

Q. You may state what relation, if any, you bear to the parties to this suit.

A. One of the plaintiffs is my wife, another is my wife's mother, another is my wife's sister, the others are my wife's brothers.

Q. I will ask you if you superintended the taking of some portion of this testimony?

Ans. Yes, sir.

Q. I will ask you if you were in Chicago taking the deposition of Mr. Fowler and Mr. Bickford?

A. When their depositions were taken that have been read I was present when the first deposition of Mr. Fowler and Mr. Bickford were taken; not the last.

Q. I will ask you if you had occasion to examine the books of the company up there?

A. Well, I was given permission to make an examination, a' did make a partial examination—made an examination of a page. I began to make minutes of the books and they objected to it, and I made no further examination.

Q. Who was with you on that occasion?

A. Mr. Plum, an attorney of Chicago, who represented the Phœnix Mutual Life Insurance Company at that city, and Mr. Bickford, Mr. Fowler's bookkeeper.

Q. Do you remember which page of the folio it was that you examined?

187 A. I could not call to mind the page; it was the one that contains the entry of Mr. Riddle's policy.

Q. That was for '72?

A. Yes, sir.

Q. I will ask you to look at that (handing witness Ex. B); examine it, and state in what *what* respect the books differ from that copy there?

(Defendant objects to witness testifying to the contents of the books, which are in writing, and the best evidence. Court overruled said objection, to which ruling of the court the defendant then and there excepted, and still excepts.)

A. It differs in this respect, that when I made the examination of the column, the right hand column on the page, nothing under the word "remarks" was there. The words reported in the month of , as it is in the copy, were not there. I will state this in explanation of that, that it was not until after considerable solicitation of Mr. Fowler and Mr. Plum, the attorney, that I was accorded the privilege of making an examination of *this* books. Mr. Fowler was not present, but instructed Mr. Plum and Mr. Bickford in my presence to allow me to examine the books. I first examined that page in the register of 1872. I was very desirous of seeing what was there for manifest reasons, and I examined the page very carefully. My attention had been called to a more careful examination of what might be on that right-hand page.

I was anxious to see what was there. I commenced to make a memorandum of what I saw on the page of the book in pencil, and when I did that I was interrupted by Mr. Plum, the attorney of the com-
188 pany, who said that they could not allow me to examine the books and make memoranda of them to give testimony in the case.

Having gone there for the purpose of making an examination, so that I could give testimony, I refused to make an examination of the books on such conditions. That closed it, and I saw nothing further.

Q. You may state when you had the first connection with this case, and under what circumstances, and what papers you received, and from whom you received them.

A. My first connection with the matter was in the fall of 1876, as a friendly adviser of the family, which is all I am yet. I am nominally only an attorney. My first connection with the case as an attorney was in July, 1877. I think about the first of July, 1877.

Q. What paper, if any, did you receive pertaining to this case, and from whom did you receive them, and when?

A. I received—if you will show me Mr. Bickford's second *second* deposition I can show you all the papers and tell you about them.

Q. The one taken on behalf of the defendant?

A. Yes, sir; the first one—one that contains a couple of exhibits.

Q. Is that it?

A. No, sir.

Q. I guess that is it.

A. (After examining the paper handed him.) In July—I think it was July, 1877—after correspondence with my wife's family, who were in the East then, it was decided that I should take charge of this case instead of Messrs. Chase & Chase, who up to that time had
189 charge of it. Mr. Chase sent to me the papers in the case. The papers that Mr. Chase sent to me and that I received were this letter, which is attached to Mr. Bickford's first deposition as Exhibit A, being a letter written Oct. 9, 1875, addressed to Jackson Riddle at Oxford, and the renewal receipt signed by Mr. Fowler on the 9th of October, 1875; these four purple-colored envelopes which are attached to this deposition, this yellow-colored one, the renewal receipt of the premium on Mr. Riddle's policy for 1872, another for 1873, another for 1874.

Q. Are these the same that you received, that are attached there?

A. Yes, sir; they are the same ones, and four notices of the time at which the premiums on Mr. Riddle's policy became due, which are signed Henry H. Koon, general agent for Illinois.

Q. In addition to the papers that I have here, what papers did you receive from Mr. Chase and the ones that are attached to that deposition?

A. My best recollection is that there was a little loose slip of paper, something similar to this, perhaps not so large as that. It was loose among the papers; not attached to any of the papers as this is. It had printed on it a statement of the fact that the premium could be paid at the Chicago office of the company. That little loose slip of paper was loose among the others, not regarded by me as any consequence, because I did not know really what was involved in the case, and I have no knowledge of where it is. It was doubtless thrown away by me, not expecting it to be of any importance, not knowing of what importance it was.

190 Q. You may state if did you receive any other notices about the premium being due except those attached to this deposition.

A. I did not.
Q. From Mr. Chase?
A. I did not.
Q. How did you receive them?
A. By mail.
Q. Enclosed in an envelope?
A. Yes, sir.
Q. Was the envelope sound when you received it, or full of holes, like any thing might have dropped out?
A. I could not say as to that. I have no recollection as to the looks of the envelope, more than it was an envelope enclosing these papers; whether it was sound or full of holes I could not say.
Q. Well, did he send you a statement of what he had forwarded to you, or specifying what it contained?
A. I am not able to say. I have no distinct recollection whether he sent any statement at all. Being a good business man as I know him to be, I presume that he wrote me a letter saying that he enclosed the papers. I took them directly from the office and made an examination of them immediately. I also found one other paper among those papers—a letter which had been written by Mr. Taylor Riddle to Mr. Chase, and the envelope enclosing it. I found that among the papers.
Q. Have you got that with you?
A. I have, sir; and whether I received the policy of insurance at that time or at some subsequent time I do not now recollect;
191 but I think at a subsequent time; rather I think it was after I received certain other papers from Mr. Chase which I wrote to him about.
Q. Were there any other notice except this?
A. No, sir; there were but the papers which I wrote to him about, and which he sent to me, the papers and proofs which have been offered to the jury, and the correspondence between himself and parties in Chicago.
Q. This exhibit here is marked Exhibit one, and this envelope and also these notices—this notice that is annexed to the yellow envelope. I will ask you to look at that and say if that is the same notice that was made a part of Mr. Bickford's deposition that has been read in evidence and afterwards withdrawn of stipulation of counsel to attach to this deposition?
A. It is the same notice.
Q. You may state, Mr. Doster, if you know the plaintiffs in this case.
A. I do, sir.
Q. You may state what relation, if any, they bear to Jackson Riddle, deceased, to whom this policy of the life insurance company was given.
(Counsel for the defendants admits that they were his wife and children.)
Q. If you know anything else that you wish to state to the jury pertaining to this case you may do so.
A. I call to my mind nothing at this time more than the fact that when I was in Chicago to take the depositions I called on Mr. Fowler quite a number of times, wanting to get an examination of these
192 books. He at first declined to have any conversation with me about it; but he subsequently, after talking with Mr. Plum, his attorney, seemed a little more kindly disposed, and he and I did talk a little about the books, and among the things that I said to Mr. Fow-

ler was this: I asked him where the proofs of death were that had been forwarded him from Chase and Chase, as I understood, and he said that he got them. Then he modified that, or seemed inclined to take that back. I supposed they were proofs of death. I did not know. I did not examine them closely.

Q. Did he say that he had received a package which he supposed to be them?

A. Yes; I believe that was his language—that he received a package, and that he supposed it to be proofs of death, or supposed them to be proofs of death; that he did not examine them closely.

Cross-examination:

Q. That yellow envelope that you speak of there, what notice did that contain?

A. I could not say from my own knowledge.

Q. Is that envelope the one that is marked October 4th, 1876?

A. Yes, sir; that is the one that is marked October 4th.

Q. Did you ever receive any papers from anybody else except Chase & Chase concerning this matter?

A. I do not know as I now recollect.

Q. Do you remember of my serving a notice on you to produce some papers?

A. I recollect some four or five days ago last week you served a notice upon me.

Q. Do you remember your answer?

193 A. Yes, sir.

Q. Give it to the jury.

A. Yes, sir. I said to Mr. Bernard when he served the notice upon me and I saw what it was, "You cannot have them."

Q. Was not this the language you used: "Well, sir, you can't have them?"

A. Well, I might have prefixed "Well, sir" to my remark. I could not say now. It is very likely that I did.

Q. That folio that you examined was folio of 72?

A. It was represented to me to be.

Q. Did not you know that it was?

A. I asked for the book and it was shown to me, and I took it for granted it was that book.

Q. That one did not have reported which appears in the column of remarks?

A. No, sir; it did not.

Q. How do you know it?

A. Because of this fact: that it was shown to me as the folio of 72. They represented it to be of 72, and I think it is folio of 72.

Q. Did not the folio state that it was folio of 72?

A. It is very likely that it did.

Q. Do you remember whether it did or not?

A. I have no distinct recollection whether it did or not. I asked for folio 72, and I took the word of the gentleman that it was folio 72.

Q. What else did you see there?

A. I saw there a notation concerning the date of Jackson Riddle's policy, or rather the date that his premium became due, and just below it or just above it. I do not call to my mind which, I saw

194 about the Jackson Riddle policy and premium, or, perhaps, the premium of Adam Eisenhauser, of Peoria, Ill's. I observed that, because on the right-hand margin of the book, under the head of re-

marks, was the abreviation "Dec." for December, and I commenced making a minute of it and was then interrupted.

Q. You did not have time to see anything else, except what you have stated?

A. Yes, sir, I did, but not after that.

Q. What else did you see?

A. I did not see anything after that that I call to my mind.

Q. What did you see before?

A. I saw on the margin of the page the word "remarks," and I saw the name' of different persons.

Q. Who were they?

A. I do not call to my mind any except this man Adam Eisenhauser; I wrote it down.

Q. What was the relative positions of these parties?

A. I think that Adam Eisenhauser and Jackson Riddle were close together, and at the bottom.

Q. Don't know which was above the other?

A. No, sir; I didn't notice that.

Q. What was the amount of his premium as shown by this book?

A. That I do not recollect.

Q. Was there not a premium column?

A. I think there was a premium column.

Q. Are you sure?

A. Well, yes; I am reasonable sure about it.

Q. What was the amount of it?

A. That I could not say.

195 Q. Did it state it had a premium to be paid there?

A. No; it did not state that it had a premium to be paid.

Q. Did it state that it had a premium that was paid in December?

A. Adam Eisenhauser?

Q. Yes, sir.

A. No, sir; it did not state that.

Q. Did it give any amount that was due?

A. Yes, sir.

Q. What was that amount?

A. I could not tell you.

Q. When was it due?

A. Well, I should say that it was due on the 20th of September. On the left-hand side of the page there was a date which, I think, is from the top for "when due." That may not be the words, or there may be no such expression there. It was either that or else it was explained by Mr. Bickford to be the column when they were due; and under the words Adam Eisenhauser the words Sept. 20, and may be a ditto mark; I think a ditto mark.

Q. Does this folio show that there is any premium due from Adam Eisinhauser?

A. I do not know. It shows columns for the figures in a horizontal position on the page running from the left-hand side to the right-hand side.

Q. Do you know all these numbers?

A. I could not tell you. I have only looked at two or three notations.

Q. You was only looking to see when paid?

A. Yes, sir.

Q. Did not stop to see whether it was premium interest notes?

196 A. No, sir; I took it to be premiums. I was interested only in finding when it was due and when it was paid.

Q. From your best recollection, from the examination you made, what do you say as to whether there was a premium to be paid or not?

A. I have no recollection about it. There was an amount to be paid, which I took to be it.

Q. Have you any recollection about it; what interested you so much about it?

A. Because I took it to be the premium. It had all the form and characteristics, as I now recollect; I took it to be the premium due from Mr. Adam Eisenhauser the 20th of September, the same time that Mr. Riddle's was; I noticed on the right hand the word "December," upon which I put my construction.

Q. The same column on the folio had figures along with Riddle's?

A. Whether they all had I could not say.

Q. You did not pay much attention to the left-hand side of the folio?

A. No, sir. I was interested when I saw paid in December, or, as I construed it, was paid in December, in finding out when it was due, and as I returned to the left-hand side of the page, I saw it was due the 20th of September, the same day that Mr. Riddle's was.

Q. You have heard the testimony of Mr. Fowler, stating that that was a mere interest payment on a paid-up policy?

A. Yes, sir.

Q. Do you remember enough about that folio to say that it was not?

197 A. No, sir; I do not know.

Q. Would you like to say that it did not?

A. No; because I am not familiar; because I have not examined it.

Q. You had examined it enough to know what there was on it; know what you remember?

A. Yes, sir; and I would have made a further examination, but when I commenced to make a memorandum of it I was interrupted.

Q. When you commenced to make a copy of the company's private books they objected?

A. Yes, sir; unless I would say that I would not testify in this case what I saw in the books. I had gone there to see what I could see, provided I could not get transcripts of the books.

Q. And this "reported in the month of" was not there?

A. No, sir.

Q. Will you swear positively?

A. Yes, sir.

Q. May not the word "reported" have been there without the word month?

A. No, sir.

Q. Do you remember any other heading except that?

A. I think there is a heading there "when due." I think there was a heading there that took in nothing else. Yes; there were other heads there, but I cannot call to mind what they were.

Q. If you had gone through you ought to remember them all.

A. I don't think that necessarily follows.

Q. What does it purport to be?

198 A. It purports to be a register of renewals. That expression may not be there, but there is something equivalent to that. It purports to be a book which contained entries when the policy premiums were due, and all that kind of thing.

Q. Where?

A. I do not know where.

Q. Did you examine the heading of this book to see what books they were?

A. No, sir.

Q. It may have been the books of the Connecticut Mutual Life?

A. I do not think that was the name.

Q. Did you examine it to see?

A. I asked for the books, and they gave to me; I took their word for it, and commenced the examination from the right hand.

Q. And will you tell this jury that you are willing to take their word that it was so, and not willing to take their oath as to what was in it?

A. Yes, sir.

Plaintiffs introduced as a witness on their behalf TAYLOR RIDDLE, who testified as follows:

Q. Mr. Riddle, where do you live?

A. In Kansas, Marion County, at present.

Q. You are one of the plaintiffs, are you?

A. Yes, sir.

Q. What relation are you to the other plaintiffs in the case, if any?

A. I am a brother to the minor plaintiffs, and one of them is of age.

Q. Your father was Jackson Riddle, was he?

199 A. Yes, sir.

Q. State whether Jackson Riddle is dead; if so, when he died.

A. He is. He died on the 6th of October, 1876.

Q. What was the cause of his death?

A. A collision of two freight trains on the L. M. & B. R'w'y.

Q. That, you say, was on the 6th of October, 1876?

A. Yes, sir.

Q. I will get you to state where Jackson Riddle lived at the time of his death?

A. At Oxford, Benton County, Ind.

Q. How long did he live there?

A. About 18 months, to the best of my recollection.

Q. From where did he come to Oxford?

A. From Monticello, Ills.

Q. State what Mr. Riddle's post-office address was during the time that he was there in Benton County, Indiana.

A. It was Oxford, Benton County, Indiana.

Q. State whether he ever lived at Fowler, Ind.

A. No, sir; he never did.

Q. State whether Fowler was, at any time before his death, his post-office?

A. It was not.

Q. How far was Fowler & Oxford apart?

A. About ten miles; a little over ten.

Q. A little over ten?

A. Yes, sir; by rail about twelve miles. There is a change to be made on the two roads. By road it is about ten miles and a half.

Q. State where you lived on the 6th October, 1876.

A. I lived at Fowler, Benton County, Ind.

Q. How long did you live there?

A. I came there on the 23rd day of May, 1876, and resided

200 there from that time until after the 6th of October.

Q. What time did you hear of the death of your father?

A. It was on the 6th day of October, about six o'clock in the evening.

Q. When did you last see him before his death?

A. It was about the 18th of September, 1876, as near as I can state, about the 18th.

Q. What was his condition of health at that time if you know?

A. It was very good; good health at that time.

Q. State whether Mr. Jackson Riddle was in the habit of receiving letters at the post-office at Fowler, Indiana.

A. No, sir; he was not.

Q. State if you had a conversation with your father relative to his policy or payment of any premiums at the last time that you saw him?

A. Yes, sir; I did.

Q. State—I don't ask you for the conversation—but state what arrangement, if any, was made between you and your father relative to the payment of any premiums on his policy, and what premium, if any, it was.

(Defendant objects to the question because the arrangement was the result of the conversation between one of the plaintiffs and the deceased at which conversation neither the defendant nor any of its agents was present. The court overruled said objection; to which ruling of the court the defendant then and there excepted and still excepts.)

A. An arrangement was made between he and I that the premium for 1876 was to be paid by me. The premium for 1876 was to be
201 paid by me by an arrangement of Jackson Riddle and myself.

Q. Well, sir, I will ask you to state whether you had the money or were subsequently to get the money to pay that with.

A. Yes, sir; I had the money at the time the arrangement was made.

Q. Now I will get you to state whether you received the notice from the insurance company concerning the payment of the premium for 1876.

A. Yes, sir; I did receive a notice.

Q. Where did you receive it?

A. I received it at Fowler, Benton County, Indiana.

Q. To whom was it addressed?

A. Addressed to Jackson Riddle, Fowler, Benton County, Indiana.

Q. Did you open the envelope?

A. Yes, sir; I did.

Q. Look at this envelope, Mr. Riddle here, and this card, and state what they are.

A. That is the notice which I received, and that is the envelope in which the notices was enclosed. That is the notice the envelope inclosed with the exception, I think there was a poster on that notice when I received it.

Q. What do you mean by poster?

A. A small slip or paster pasted on that notice which I do not see on it now.

Q. What was on the paster?

(Defendant objected to giving contents of written documents. The court overruled said objection to which ruling of the court the defendant then and there excepted and still excepts).

202 A. I think the substance of the poster is this. You pay this premium to A. G. Fowler, Chicago, or remit direct to this office.

Q. You do not pretend to quote language, do you?

A. No, sir; that was just the substance, the language I do not recollect. That is the substance of the paster.

Q. When did you receive this envelope and notice?

A. I have no distinct recollection as to the time I did receive it, but my belief is that it was on the 6th of October.

Q. You have been examined before in this case, have you not?

A. Yes, sir.

Q. At Fowler, Indiana?

A. Yes, sir.

Q. In that examination you stated that you received this notice on the 9th of October?

A. Yes; I did.

Q. Now I will get you to state what reasons, if any you have, for saying that it was not on the 9th of October, but was on the 6th of October.

A. Well, I have several reasons for believing that it was earlier than the ninth. One is that a letter mailed at Chicago on October 4th would reach Fowler earlier than October 9th. Another is that I had a conversation with Mr. Ed. P. Williams, also with Henry Dickson. They stated facts that could not have occurred if the notice had not come before October 9th.

Q. What, if any other, reasons, Mr. Riddle, have you for now thinking that that notice came on the 6th of October or earlier than the 9th.

A. Well, the reasons that I have stated before that a letter mailed at Chicago, October 4th——

203 Q. Well, I say what other reasons; what did you do with this card and envelope?

Q. Well, on Sept. 9th or 10th I sent it to Hiram W. Chase, La Fayette, Indiana—on October 10th.

Q. How did you send it?

A. In an envelope accompanied by a letter. I sent the notice to Mr. Chase October 10th and wrote him a letter.

Q. Have you seen that letter since then?

A. Yes, sir.

Q. What, if any, recollection does that bring to your memory?

A. It revives the recollection that Mr. Chase and I had a conversation about this notice at the time this telegram was sent to Culbertson, Blair & Co. on October 9th.

Q. When you received that notice and opened it what time was it?

A. It was on the afternoon of October 6th.

Q. What time do you think?

A. It was to the best of my recollection about three o'clock.

Q. What time in the afternoon?

A. I think it was about three o'clock on October 6th.

Q. Look at that envelope and state what it is. I don't ask you to state any of its contents, but just to identify it.

A. This is the envelope which enclosed the notice which I sent to Mr. Chase (witness is here handed a letter, asked what that is), I do not know without looking at the contents.

Q. Identify that two, if you can, without stating the contents.

204 A. That is a letter that I wrote to Mr. Chase at the time of sending the notice—a brief explanation.

Q. In whose possession was this letter from the time that you mailed it until now?

A. It was in the possession of Mr. Chase for quite a length of time, as he was an attorney in this case. I suppose he transmitted to Messrs. Ruggles, Scott and Linn, principal attorneys in this case.

Q. (By COURT.) I do not fully understand what time it was in the afternoon that you received this notice.

A. My belief is that it was about three o'clock.

Q. What, if anything, did you determine to do when you received the notice and what did you do?

A. I determined to pay the premium as soon as possible.

Q. As soon as when?

A. As soon as possible.

Q. When was it possible?

A. Well, the following day was as soon as it could have been done without a great deal of trouble.

Q. What day of the week was it that you received the notice?

A. That was on Friday.

Q. That was the day of your father's death?

A. Yes, sir.

Q. What time in the day did your father die?

A. About six o'clock—from statements that I received from parties who were there present.

Q. In the afternoon or the forenoon?

A. Six o'clock in the afternoon.

Q. What, if anything, after you received this notice did you do; where did you put it?

205 A. Well, I put it in my coat pocket—just as a man would, just slip'ed it in the side of his coat pocket. It would be the natural place that a man would put a letter of any description.

Q. When did you next see that notice?

A. The next time that I saw that notice was the morning of Oct. 9th.

Q. Did you change your clothes after receiving that and putting it in your pocket?

A. I changed clothes after receiving this telegram about Jackson Riddle being mortally wounded. A few minutes afterwards—40 minutes—I received notice that he was dead, about eight o'clock in the evening.

Q. Where did you go?

A. Right away to the hotel, where I was boarding, changed my everyday clothes and put on a respectable suit and went down to the depot with an intention of going to La Fayette on the first opportunity.

Q. Did you go to La Fayette?

A. Yes; I did.

Q. That was the night of the sixth?

A. Yes, sir.

Q. When did you return to Fowler?

A. I returned on the evening of the ninth, about four o'clock.

Q. Where were you between the time that you left and the time that you returned?

A. Part of the time I was at La Fayette, part of the time I was at the late residence of Jackson Riddle.

Q. How did you come to be at the residence of Mr. Riddle?

206 A. I accompanied the body of Jackson Riddle.

Q. When did you go to La Fayette next?

A. On the morning of the 9th of October, being Monday.

Q. What did you go for?

A. The principal purpose of my visit to La Fayette was to enquire into the liability of the railroad company for causing his death.

Q. Who did you go to?

A. To Mr. Chase—Hiram W. Chase.

Q. State whether you employed Mr. Chase in the matter of this insurance.

A. Yes, sir; I did.

Q. I will get you to state who, if anybody, accompanied you to Mr. Chase's office.

A. Mr. Joseph Heath.

Q. Who is Mr. Joseph Heath?

A. He is a cousin of Jackson Riddle's.

Q. He is not a brother-in-law, as Mr. Chase testifies?

A. No, sir.

Q. Did your mother accompany you to La Fayette to Mr. Chase's office?

A. No, sir.

Q. When did she for the first time, to your knowledge, see Mr. Chase?

A. I have no distinct recollection as to the first time that she went there, although I think I accompanied her.

Q. When do you think it was?

A. Well, I think probably it may have been about the first of November; may not quite so early.

Q. I will ask you to state whether you or your mother (Mary J. Riddle) stated to Mr. Chase that Jackson Riddle had the money pro-
207 vided with which to pay this premium of 1876 on his policy, and that it had been loaned here in Kansas and that you were daily expecting it.

A. No, sir.

Q. Did you or Mrs. Riddle?

A. No, sir; I did not; Mrs. Riddle was not present, and, of course, she could not.

Q. State what, if any, conversation was had between Mr. Chase and your mother in reference to any money being owing to your father in Kansas and the reception of it.

A. I do not recollect of any such conversation at all.

Q. State if you recollect any conversation and any subsequent advice with Mr. Chase about it.

A. About the first of November they received a telegraph money order from Mr. Doster or from the Emporia National Bank (I ain't sure which) for $100 on La Fayette. The La Fayette office notified me at Fowler by a telegram that such a money order was there waiting my approval, and asking me to come and get it. I went there the following day. My mother accompanied me, Mary J. Riddle. We went to Mr. Chase's office that day and asked his advice about getting money by telegraph. I wanted to know how we were to proceed to get it, and he told us.

Q. You said that you employed Mr. Chase to conduct this insurance case?

A. I did; yes, sir.

Q. That is on the 9th of October?

A. On the 9th of October.

208 Q. What steps, if any, did Mr. Chase take in the matter, the first thing to your knowledge?

A. In the insurance case?

Q. Yes, sir.

A. The first steps that he took was to telegraph Messrs. Culbertson, Blair & Co., of Chicago.

Q. Did you hear the telegram that was attached to his deposition here?

A. Yes, sir; I carried the telegram to the telegraph office from Mr. Chase.

Q. You did?

A. Yes, sir.

Q. Do you recollect it from the wording of it?

A. I recollect that I read it once or twice.

Q. Look at that and say what it is. (Hands paper to witness.)

A. This is a copy of a telegram sent to Messrs. Culbertson, Blair & Co., Chicago.

Q. Whose handwriting?

A. From the general appearance I should take it to be Fred. Chase, of the firm of Chase & Chase.

Q. State if you made an examination of Mr. Riddle's insurance papers or his papers after his decease; and if you did, when?

A. Yes, sir; I made an examination of his papers after his death.

Q. When was that?

A. On October 9th I made an examination among all his private papers.

Q. I will get you to state whether you found any papers relative to his policy of insurance in the Phœnix Mutual Life Insurance
209 Company, the defendant in this case.

A. Yes, sir; I found several papers.

Q. I will get you to—you have identified these first two—I will get you to look at all these others (hands witness a lot of papers) and state what they are.

A. Yes; these are the papers that I found, with a few exceptions.

Q. What exceptions are there?

A. I found the policy of Jackson Riddle and also a letter from the insurance company, which I do not see there to the exhibits.

Q. I will get you to look at these two papers (hands the papers to witness) and state whether you found them there.

A. Yes, sir; that is the letter which I found in the private papers of Jackson Riddle.

Q. What is the other?

A. That is the renewal receipt of 1875, which I do not see in there.

Q. State whether you found any other papers than the policy, these two papers, and this bundle which I hold in my hand which you have identified.

A. No, sir; I did not find any other except these exhibits.

Q. What were Mr. Riddle's habits in preserving his private papers, especially his insurance papers?

A. He was very particular about preserving his papers—notices, renewal receipts, and even correspondence.

Q. State whether, when you went to La Fayette on October 9th and saw Mr. Chase, you took him any other notices than those that
210 are attached to that deposition, or any other papers than are attached to that deposition and including the policy.

A. No, sir; I did not take any other except those attached to that deposition. I handed all the papers to Mr. Chase, except this notice mailed in Chicago October 4th, and the notices here are those which I took to Mr. Chase, except this one, which I mailed him afterwards.

Q. Did you mail it in the letter and envelope which you have examined?

A. Yes, sir; I enclosed it in the envelope which I have identified here a few minutes ago.

Q. Has this insurance ever been paid to the amount of this policy?

(Mr. BERNARD, counsel for defendant.) We admit that it has not.

Cross-examination:

Q. Mr. Riddle, where did you live on the 27th of February last, 1878?

A. I lived in Fowler, Benton County, Indiana.

Q. Do you remember giving a deposition at that time before an officer by the name of Calais?

A. Yes, sir; I recollect of giving it.

Q. Were you in good health at the time that deposition was taken?

A. About the same health as at the present time.

Q. Were you of sound memory at that time?

A. According to my judgment I was.

Q. Just as sound as now?

A. I should think as fully.

Q. I want to know as a fact.

A. I may not be capable of judging.

211 Q. Do you remember at the time that you gave that deposition that the attorney for the plaintiffs, your brother-in-law here (Mr. Doster), asked you the question in words as follows:

"State where you were from September 7th, 1876, to the 10th of October, 1876"?

A. Yes; I recollect that question.

Q. Well, now, state if you know what answer you gave to it at that time.

A. The answer, as I recollect it, is that I was in Fowler during the period just mentioned.

Q. You were in Fowler during that time?

A. Between the 7th of September and the 10th of October, 1876, 1876, with the exception of one or two days.

Q. Did you remember that this question was asked you: "Did any mail come to the post-office at Fowler for Jackson Riddle between the 7th day of September and the 10th of October, 1876?"

A. Yes, sir; I think I do.

Q. What answer did you make to it?

A. My recollection is that my answer was this: "That none had come on the 7th of September, but on the 9th of October a letter came to Jackson Riddle."

Q. This question was asked of you, was it not? "Did any mail come to the post-office at Fowler for him between the 7th of September and the 9th of October, 1876?"

A. Yes, sir; I think that that question was asked me.

Q. What answer did you make?

A. The answer that I made I think was this: "That none came on the 7th of September, but on Oct. 9th a letter came addressed to Jackson Riddle."

Q. Was not this your answer: "No, sir, I think not; at least there was none put in my box."

212 A. What is the date of that?

Q. October 9th.

A. I think I testified that none came on September 7th, but on October 9th.

Q. Was not this your answer; "No, sir, I think not; at least there was none put in my box?"

A. Not as I recollect.

Q. Do you recollect whether you made that answer to that question?

A. I do not think that I made that answer. I might have made that answer to some other question.

Q. You remember this question being asked of you: "If any mail came to the post-office at Fowler, Indiana, for Jackson Riddle during the time you have mentioned, if you would have known it?" Do you remember that question?

A. I have no distinct recollection as to the question. I think I would if any had come, if would have come as that one did on October 9th.

Q. Did you make this answer: "I think that it would have been put in my box as that one of the 9th was?"

A. Yes, sir; I think that is the same.

Q. Do you remember this question being asked? "State whether any mail addressed to Jackson Riddle came to the post-office at Fowler prior to the 7th of September, 1876." What answer did you make to that?

A. I do not know what answer I made then, but I know what I would make now: "No, sir; none did come."

Q. Well, that is what you made then. Was an envelope handed you there at that time, and asked you if you recognized it?

A. At what time?

213 Q. At the time this deposition was taken?

A. Yes, sir; I believe there was.

Q. Do you remember then this question being asked: "Would you recognize the envelope inclosing the letter from the defendant which you got at the post-office on the 9th of October, 1876, if you were to see it?"

A. I do not know that that was the question, but an envelope was handed to me.

Q. Do you remember anything about it?

A. I am not positive whether that was the question. An envelope was handed to me, which I examined, and identified it as being an envelope inclosing the notice which I had received from the defendant company.

Q. Did you swear positively that you did not receive that notice until you returned from La Fayette, Ind.?

A. I think I did. That is my recollection at that time that I did not.

Q. How long ago was that?

A. I think that was in February, 1877.

Q. You remember long periods better than short ones.

A. Well, from circumstances.

Q. Is it a hallucination?

A. I had my memory refreshed in these various ways.

Q. Do you do so in all cases, or just in this particular case?

A. I cannot say.

Q. Can't tell whether your memory runs backwards or forwards?

A. I think that the more a man reflects upon a question the better he will recollect it.

Q. In you' cross-examination, was not this a question asked:

214 "Did any letters come to Fowler after your father's death," do you remember?

A. I think there was some letters come there.

Q. Where did they come from?

A. I do not recollect where.

Q. Did not loose any of them?

A. Well, I have not them now.

Q. You got them when they came there, did you not?

A. I do not recollect, but I think possible that I did. If they were delivered to me, of course I did.

Q. You say that one of the reasons why you remember now what you did not remember in February is, that from the running of the mails from Chicago to Fowler it was not at all probably that a letter would have been so long on the road?

A. Yes, sir; that is one of the reasons I give for receiving it earlier; that what I testified to before.

Q. Did you know how the mails run when you testified before?

A. Well, I possibly may have know', but I never gave any particular thought to it?

Q. Did not consider the proposition then?

A. No, sir.

Q. Was not considered necessary at that time, was it?

A. Well, I do not know as I put that construction on it at all.

Q. Was it not a little straining process to suppose that it took five days to get a letter down from Chicago?

A. I did not think anything about it.

Q. The proposition did not refresh your mind then, the facilities of the mail?

A. I did not consider that at that time necessary.

Q. Your mind did not need any refreshing?

215 A. I did not give it any.

Q. Did you not state that you knew when the mails left Chicago?

A. I do not think I did.

Q. Sure?

A. I have no distinct recollections.

Q. Was not this question asked: "During the month of September, 1876, there were daily mails, was there not; and, if so, how many?

A. Yes, sir.

Q. What answer did you make?

A. One daily mail received from Chicago.

Q. Only one?

A. Yes, sir.

Q. You knew the fact that there was one daily mail received from Chicago?

A. Not more than one.

Q. Was not this question asked: "How lond did it take the mail-train to run from Chicago, &c.?"

A. I do not recollect that question.

Q. Don't remember what your answer was to that?

A. No, sir.

Q. Did you not answer this way: "Four hours and a half"?

A. I do not think I did.

Q. Are you positive you did not?

A. No; I am not positive that I did not make that answer.

Q. Kind of a blank in your memory about that?

A. Well, it was a question that I did not count of but very little consequence. If it was asked at all, I do not recollect it.

Q. Was this question asked you: "When did you last see

216 your father alive?"

A. I believe that question was asked me.

Q. What answer did you make to it?

A. I think I answered, on the 17th or 18th of September.

Q. You can remember that this question was asked you, and that you answered it, "On the 17th or 18th September, 1876?" You can remember that positively, can you?

A. Oh, no; I am not positive about anything.

Q. I mean in substance?

A. I think that question was asked me, and that probably was the answer that I made.

Q. Do you know whether the question was asked you?

A. I think it was, but I am not positive.

Q. What was your answer?

A. I think I made that answer if it was asked.

A. Are you positive?

A. I think I did.

Q. Then you gave another deposition did you not? You had another swear in this case since that time?

A. Yes, sir.

Q. Where was that?

A. Marion Center, Marion County, Kansas.

Q. Do you remember this question being asked you down there: "Do you know whether the mail from Chicago to Fowler was ever carried past that office to other points, and returned on trains going to Chicago; and if so, explain what you know?"

A. Yes, sir; that question was asked me.

Q. What did you say?

A. I told him that it had, to my certain knowledge, been carried past and delivered by trains going to Chicago.

217 Q. Then you knew all about that business?

A. Well, I knew that letters had been directed to in from Chicago by business men which had been carried by and which I received from trains going to Chicago.

Q. You were perfectly familiar with this arrangement of the mails were you not?

A. My familiarity dated after that time.

Q. Did it date before last February?

A. Well, about that time. I was in business in Fowler, I think, last February.

Q. You were in business then last February?

A. Yes, sir.

Q. Did you get beer from Chicago and pay freight and have correspondence with Chicago beer men?

A. No, sir.

Q. Where did you get your goods?

A. From Chicago.

Q. You kept a saloon?

A. I was the proprietor of a saloon, but did not have anything to do with the vending of the article.

Q. You did not jink the beer?

A. No, sir.

Q. You owned it?

A. Yes, sir.

Q. You have been farmer since that?

A. Yes, sir.

Q. Do you own a farm?

A. No, sir.

Q. When did you ever work on a farm?

A. I worked on a farm when I was small.

Q. Did you work on a farm since you went into the saloon business?

218 A. No, sir.

Q. What did you mean by saying you were a farmer?

A. Because I was going to work on a farm.

Q. If a man is a farmer he is simply a farmer?

A. I consider if a man is working on a farm he is a farmer.

Q. What was your occupation when you moved into town?

A. I am not living in town.

Q. Are you still a farmer?

A. My intention' are that I expect to engage in farming and I think that I said so in the deposition.

Q. You say, that you left this notice, that you got back then on the 6th, that you forgot to swear was on the 9th in your coat-pocket?

A. I say this, that I did not have the notice with me at the time that I went to La Fayette.

Q. But swear here that you put it in your coat-pocket and changed your clothes?

A. I swear that I suppose that I put it in my coat-pocket.

Q. Why do you remember it?

A. My impression is that I put it in my coat-pocket.

Q. How do you know that you got it?

A. From circumstances.

Q. You found it in your possession?

A. I knew that I got it.

Q. Do you vividly recollect that you got it out of the post-office?

A. I have no distinct recollection as to *to* the time that I got it. I only remember what parties told me.

Q. May not your family have got it?

A. No; none of them lived there.

219 Q. Do you recollect pos'tively whether you got it?

A. No, sir.

Q. It is kind of blank?

A. No, sir; but I don't recollect the time that I got it.

Q. When you are positive as to having conversation with two different friends, still you do not remember that you got it?

A. My belief is that I got it.

Q. After taking the pains to talk with two friends about this matter and testify on the stand that you put that in your coat-pocket and changed your clothes you pretend to say that you have no distinct recollection?

A. I say that I got it, but have no distinct recollection when I received it.

Q. Do you know that you got it out positively?

A. Yes, sir; because no one else could have.

Q. From your own recollection, do you recollect of having got that notice?

A. Yes, sir; I recollect that notice was delivered to me.

Q. If you had this in your coat and left it at home—how did you show it to the friend on the train?

A. I did not do so.

Q. Did you not show it to your friend going down on the train?

A. I do not know.

Q. In this refreshing business did he not say you did?

A. I am not here to say what he did.

Q. How did you come to state in this deposition, that you have

spoken of to Mr. Templeton, that you put that notice in your coat-pocket on October 6th, which you changed before starting for Lafayette?

220 A. I remember finding that notice in my pocket. I think that I did.

Q. Is not that true as a matter of fact?

A. Yes, sir; I think it was.

Q. Why did you swear a few minutes ago that you did not put it in your coat-pocket?

A. I did not swear anything of that kind.

Q. Did you swear at the same time that you made the second deposition: "I conversed with several of my friends, Henry Dickson and one Templeton"?

A. Yes, sir.

Q. Did you swear down here at Marion Center that you refreshed yourself with these parties?

A. I think that I did converse with these parties.

Q. Why did you just say that you had not had any conversation with Templeton?

A. I do not think I said that.

Q. Your memory reaches away back to two years ago?

A. That may be the construction that you put on it. I think that I swore that these parties related facts to me that could not have been had not the notice been received on October 6th.

Q. Did you not say, "and further, during the summer of 1878, I conversed with several of my friends among them Ed. P. Williams, Henry Dickerson, and Orne Templeton, who stated facts that could not have occurred unless the notice had been received, &c., &c.," going on further, which I do not read?

A. I think I said that I had conversed with these parties; yes, sir?

Q. Did not you state "facts which could not have occurred unless the notice was received on October 6th?"

221 A. I think I did.

Q. Why did you say that you did not have any conversation with Templeton?

A. I do not recollect denying any conversation I had with Templeton.

Q. Did you have a conversation with Templeton?

A. I had various conversations with Templeton, but not on this subject.

Q. Did you pull out that notice that you left behind you on that train that night and show it to him?

A. I do not recollect.

Q. Then if he swore to it, he swore to that that was not correct?

A. I do not think that he swore to any such a thing.

Q. You did not take it with you?

A. No, sir; I did not have it with me on that evening.

Q. And in that conversation did he not state that you took it out of your pocket?

A. I think he said that I took it out of my pocket and showed it to him, but he said it was so dark that he could not read it.

Q. So then, if you left it behind you, you did not show it to him?

A. I may have showed him some paper, but not that one.

Q. You say you wrote a letter to Chase & Chase sending this notice down to them?

A. Yes, sir; I did on the 10th of October.

Q. Are you willing to introduce that letter in evidence?

A. I am perfectly willing that that letter should be read in evidence.

Q. Will you be kind enough to read it? (Hands same to
222 witness.)

A. "Fowler, October 10th, 1876. Mr. Chase: Dear Sir: I arrived at Fowler last night, and found the other notice from the insurance company. Thinking it might be of some use to us, I send it to you as I received it. Respectfully yours. Taylor Riddle"—referring to a notice that he and I had had a conversation about.

Q. You had a conversation about this before?

A. Yes, sir; we had some conversation about it.

Q. Do you remember that you swore in this case that he asked you when you were in Lafayette on the 9th of October, where the notice of 1876 was, and that you told him there was none which had been received?

A. I think I told him that none had been received.

Q. He asked you particularly about it, and told him none had been received?

A. Yes, sir. We had a conversation after that on the same day.

Q. Do you remember of swearing on the 27th day of this last February, in your deposition, that you told him, upon his enquiring where the notice was, that that one had never been received?

A. I do not recollect when this deposition was taken.

Q. 27th day of February.

A. That may have been the date, but I do not recollect. I think that when he asked me where the notice was for 1876 that I told him none had been received. I thought at that time that none had been received.

Q. You did not correct that statement, nor recall anything?

A. Not at that time.

223 Q. Have you thought about it up to the time that you gave this *dis*position last February?

A. No, sir; it occurred on the 19th of October, 1876, and I do not recollect the time that this deposition was taken.

Q. It was upon the 27th.

A. I say that I testified to what I thought to be true.

Q. You do not remember anything about it?

A. No, sir.

Redirect examination:

Q. Mr. Riddle, state why you told Mr. Chase, in explanation of his inquiry, that none had come, that is, a notice for 1876. You said that one had come, as you believed, and that upon your return to Fowler you found it. State how you came to make that mistake, and how you came to recollect how that you had got one; whether you got that confounded with any other notice.

A. In looking over all the papers, Mr. Chase said that there was no notice here for 1876.

(Defendant objects to witness stating any conversation between one of the plaintiffs and his attorney, at which neither the defendant nor any of its agents was present. The court overruled said objection; to which ruling of the court the defendant then and there excepted and still excepts.)

Q. How did you come to make this mistake?

A. I would have to state some conversation that occurred between me and Mr. Chase. There was no notice found in the papers for 1876. Mr. Chase and I framed a telegram to send to Chicago to Messrs. Culbertson, Blair & Co. to make tender to the insurance company. I think

that I told Mr. Chase at that time no notice had been received;
224 but after going home I discovered that I had the notice. I think I told Mr. Chase at that time that we were sending the telegram. I am positive that I told him that I had the notice, but I did not have it with me.

Q. On the same day that you told him that you had not?

A. Just before sending the telegram that he asked for the amount to be tendered to the company.

Q. Did you at this time leave these papers with Mr. Chase?

A. I did; left all the papers, except the notice of 1876, and the envelope inclosing the same.

Recross-examination:

Q. You do not say anything in this deposition about the fact of there being any notice *being* received?

A. No, sir; I think not. The deposition was not directed to that fact.

Q. But the despatch to Messrs. Culbertson, Blair & Co. caused you to remember it?

A. Yes, sir.

Q. The reason why the tender should be made?

A. I suppose so. If I could look at the despatch, I could tell you. I did not say anything about the notice at all.

Plaintiffs introduced in evidence a yellow envelope, with the following words and figures upon the same, and marked Exhibit 1:

Yellow envelope

In upper left-hand corner was the following:

225 [Branch office Phœnix Mutual Life Insurance Company, cor. Clark and Randolph sts., Chicago, Ills. Return in ten days to Allen G. Fowler, supt. western dep't.]

And the address,

JACKSON RIDDLE, Esq.,
Fowler, Indiana.

Postmarked Chicago, Oct. 4, 11 a. m., Ill., and 3 ct. stamp in right-upper corner.

Plaintiff then introduced in evidence a card notice, with the following words and figures upon the same, and marked Exhibit 2:

[Branche office, Phœnix Mutual Life Insurance Company, northeast cor. Clark & Randolph sts., (Ashland block), Chicago, Ills.]

Mr. JACKSON RIDDLE:

The premium on your policy, No. 56960, will be due on the 20th day of September at this office.

STATEMENT.

Annual premium	215
Less dividend	79 55
Net premium	135 45
Interest	29 96
Total cash due	$165 41

Yours respectfully,

ALLEN G. FOWLER,
Sup't Agencies.

Please return this notice, and notify the company of any change of address. Office hours from 9 a. m. to 4 p. m.

226 Plaintiffs then introduced in evidence a card notice with the following words and figures upon the same, and marked Exhibit 3.

[Branch office Phœnix Mutual Life Insurance Company, Chicago, Ill.]

Mr. JACKSON RIDDLE:

The premium on your policy No. 56960 will be due on the 20th day of Sept. at this office.

SETTLEMENT.

Cash premium	108
Interest on 2 notes	12 84
Total cash due	$120 84

Make check for premium to the order of co. and note for $107.

Yours, respectfully,

HENRY H. KOON,
General Agent for Illinois.

Please return this notice and notify the company of any change of address. Office hours from 8 a. m. to 5 p. m.

Also a paper slip attached to notice with the following words and figures upon the same:

You can pay your premium on or before the day it becomes due to W. G. Herron, agent at Monticello, Ill's, or remit direct to this office.

Also the renewal premium receipt for the year 1872, which is in words and figures as follows:

OFFICE PHŒNIX MUTUAL LIFE INSURANCE COMPANY,
Hartford, Conn., Sept. 20, 1872.

Policy No. 56960, insuring the life of Jackson Riddle is hereby continued in force for one year, to wit, until 20th day Sept., 1873, at 12 o'clock noon. But in case any note or notes given as part
227 of cash premiums on said policy shall not be paid or or before the maturity thereof, said policy shall at once become void, without notice to the insured or the person for whose benefit said policy is issued, or whomsoever shall then be the lawful holder or owner thereof. And this certificate receipt shall not be valid or in any manner binding on this company until the premium, interest, and assessment is paid, as per margin, and this receipt countersigned by H. H. Koon.

J. F. BURNS, *Secretary.*

Herron.

Annual premium, $215.00: less dividend, cash part of premium, 108; interest on 2 notes, 12.84: excess of notes surrendered over dividend ; extra premium ; cash due, $120.84; note in addition for $107.

Received the above this 20th day of Sept., 1872, by Henry H. Koon, gen'l agent, at Chicago, Ill's.

Said renewal receipt having an endorsement on the back in red ink in words and figures as follows:

☞The insured will please take notice that no receipt for premium on this policy is valid unless signed by the president or secretary of the company at Hartford, Conn., and that no agent has authority to interline, alter, or otherwise change any policy or to receive any premium after date of its policy being due without special permission from the officers of the company.

228 Plaintiff introduced in evidence a card notice with the following words and figures upon the same, and marked Exhibit 4.

[Branch office Phœnix Mutual Life Insurance Company, northeast cor. Clark & Randolph str. (Ashland block), Chicago, Ill's.]

Mr. JACKSON RIDDLE:

The premium on your policy No. 56960 will be due on the 20th day of Sept., at this office.

SETTLEMENT.

Cash premium	108 00
Interest on 3 notes	22 57
Total cash due	$130 57

And note $107.00.

Yours, respectfully,

HENRY H. KOON,
General Agent for Illinois.

Please return this notice and notify the company of any change of address. Office hours, 8 a. m. to 5 p. m.

Also paper slip attached to card notice with the following words and figures upon the same, to wit:

You can pay this premium on or before the day it becomes due to Wm. G. Herron, agent, at Monticello, Piatt Co., Ill's, or remit direct to this office.

Also the renewal premium receipt for the year 1873, which is in words and figures as follows, to wit:

OFFICE OF PHŒNIX MUTUAL LIFE INSURANCE COMPANY,
Hartford, Conn., Sept. 20, 1873.

Policy No. 56960, insuring the life of Jackson Riddle, is hereby continued in force for one year, to wit, until the 20th day of Sept.,
229 1874, at 12 o'clock at noon. But in case any note or notes given as part of cash premiums on said policy shall not be paid on or before the maturity thereof, said policy shall at once become void without notice to the insured or the person for whose benefit said policy is issued or whomsoever shall then be the lawful holder or owner thereof. And this certificate receipt shall not be valid or in any manner binding on this company until the premium, interest, and assessment is paid, as per margin, and this receipt countersigned by H. H. Koon.

J. F. BURNES,
Secretary.

Annual premium, $215.00 less dividend; cash part of premium, 108.00; interest on 3 notes, $22.47; excess of notes surrendered over dividend ; extra premium ; cash due, $130.47. Note in addition for $107.00.

Received the above this 20th day of September, 1873, by Henry H. Koon, agent, at Chicago, Ill's.

Said renewal receipts being endorsed in red ink as follows:

☞The insured will please take notice that no receipt for premium on this policy is valid unless signed by the president or secretary of the company at Hartford, Conn., and that no agent has authority to interline, alter, or otherwise change any policy or to receive any premium after date of its being due without special permission from the officers of the company.

Plaintiffs introduced in evidence a card notice with the following words and figures upon the same, and marked Exhibit 5.

230 [Branch office Phœnix Mutual Life Insurance Co., northeast cor. Clark & Randolph st's, (Ashland block), Chicago, Ill's.]

Mr. JACKSON RIDDLE:

The premium on your policy, No. 56960, will be due on the 20th day of Sept. 1874, at this office. Please pay Wm. G. Herron, agent, Monticello, Ills.

Yours, respectfully,

HENRY H. KOON,
General Agent for Illinois.

SETTLEMENT.

Cash premium	$108 00
Interest on 4 notes	29 96
Total cash due	$137 96

And note for 107.00.

Please return this notice and notify the company of any change of address.

Office hours from 9 a. m. to 5 p. m.

Also the renewal premium receipt for the year 1874, in words and figures as follows:

OFFICE PHŒNIX MUTUAL LIFE INSURANCE COMPANY,
Hartford, Conn., Sept. 20, 1874.

Policy No. 56960, insuring the life of Jackson Riddle, is hereby continued in force for one year, to wit, until the 20th day of Sept., 1875, at 12 o'clock, noon. But in case any note or notes given as part of cash premiums on said policy shall not be paid on or before the maturity thereof, said policy shall at once become void, without notice to the insured or the person for whose benefit said policy is issued, or whomsoever shall then be the lawful holder or owner thereof. And this certificate receipt shall not be valid or in any manner binding on this company until the premium, interest, and assessment is paid, as per
231 margin, and this receipt countersigned by H. H. Koon, Monticello.

J. F. BURNES, *Secretary.*

Annual premium, $215.00. Less dividend . Cash part of premium, 108. Interest on 4 notes, $29.96. Excess of notes surrendered over dividend, . Extra premium . Cash due, $137.96. Note in addition, $107.00.

Received the above this 20th day of Sep., 1874, by Henry H. Koon, gen'l agent at Chicago, Ills. Said renewal receipt being endorsed in red ink, as follows:

☞ The insured will please take notice that no receipt for premium on this policy is valid unless signed by the president or secretary of the company, at Hartford, Conn., and that no agent has authority to interline, alter, or otherwise change any policy, or to receive any premium after date of its being due, without special permission from the officers of the company.

Plaintiffs introduced in evidence a card notice with the following words and figures upon the same, and marked Exhibit 6.

[Branch office Phœnix Mutual Life Insurance Co., northeast cor. Clark & Randolph sts., (Ashland Block,) Chicago, Ills.]

Mr. JACKSON RIDDLE:

The premium on your policy No. 56960, will be due on the 20th day of Sept., 1875, at this office.

Yours, respectfully,

H. H. KOON,
General Agent for Illinois.

SETTLEMENT.

Annual premium	$215
Less dividend in cash	19 55
Net premium	$135 45
232–3 And interest on 4 notes	28 96
Total cash due	$165 41

Please return this notice and notify the company of any change of address. Office hours from 9 a. m. to 5 p. m.

Plaintiff introduced in evidence four majenta envelopes, of which the following are copies, marked Exhibit 7.

Agency of Phœnix Mutual Life Insurance Co., of Hartford, Conn. Henry H. Koon, gen'l agent for Illinois. Office, 161 West Washington street, Chicago, Ills.

JACKSON RIDDLE, ESQ.,

PIATT CO. *Monticello, Ills.*

Postmaster please return if not called for in ten days.

Postmarked: Chicago, Ills., Aug. 24, and stamped.

Agency at Phœnix Mutual Life Insurance Co. of Hartford, Con., Henry H. Koon, gen'l agent for Illinois. Northeast cor. Clark & Randolph sts., (Ashland Block,) Chicago, Ills.

JACKSON RIDDLE, ESQ.,

Monticello, Piatt Co., Ills.

Postmaster please return if not called for in ten days.

Postmarked: Chicago, Ills., Aug. 29, and stamped.

Agency of Phœnix Mutual Life Insurance Co. of Hartford, Conn., Henry H. Koon, gen'l agent for Illinois. Office northeast cor. Clark & Randolph sts., (Ashland Block,) Chicago, Ills.

JACKSON RIDDLE, ESQ.,

Monticello, (Piatt Co.,) Ills.

Postmaster please return, if not called for in ten days, Henry H. Koon, gen'l agent, &., Chicago, Ills.

Postmark can't be made out; stamp gone.

234

Agency of Phœnix Mutual Life Insurance Co. of Hartford, Conn., Henry H. Koon, gen'l agent for Illinois. Office northeast cor. Clark & Randolph sts., (Ashland Block,) Chicago, Ills.

JACKSON RIDDLE, ESQ.,

[**Monticello, Ills.*]

PIATT CO.

For Oxford, Ind.

Postmaster please return if not called for in ten days to Henry Koon, gen'l agent at Chicago, Ills.

* Erased.

Postmarked Chicago, Ill., August 30th, p. m., and also Monticello, Ill., Aug. 31, and stamped.

The foregoing is all of the testimony introduced in the case.

After which the plaintiffs rested.

Then defendant moved the court to charge the jury that under the pleadings and evidence in this case, they should find a verdict for the defendant. The court refused to charge the jury as moved by the defendant, and overruled the motion of the defendant to that effect; to which ruling of the court the defendant then and there excepted, and still excepts. Whereupon the defendant moved the court to specially charge the jury, first: That if the jury believe from the evidence that

235 William Herron had a contract that was in printing and writing executed by himself and H. H. Koon, as gen'l agent, dated at Chicago, that they will totally disregard all other testimony as to the powers of Wm. Herron. That the contract itself and nothing else can show his authority to act for this defendant.

Second. That if the jury believe from the evidence that Jackson Riddle was possessed of certain education, enough to read printing, and if the jury believe from the evidence that the policy and renewal receipts received by Jackson Riddle contained upon them a notice stating the powers of William G. Herron, that any statement made by William G. Herron to Jackson Riddle, beyond the scope of the powers contained in this notice, he was under no obligation to expect and these statements do not bind the company.

Third. That from the evidence in this case there is no evidence that Wm. G. Herron ever was the agent of the Phœnix Mutual Life Insurance Company other than its sub-agent, under a contract between Wm. G. Herron and H. H. Kohn, as general agent, and that the testimony in this case shows that the officers of this defendant never had any knowledge of Mr. Wm. G. Herron even being a sub-agent.

That the court will instruct the jury that the evidence in this case does not show that the company even had any correspondence with William G. Herron; that they never sent from their office any renewal receipt to Wm. G. Herron; that they never had any correspondence with said Herron; that they never knew, except through their general agent at Chicago, that said Herron even acted as a sub-agent; that

236 said renewal receipts were never entrusted to him by the officers of the defendant, but were always sent to defendant's general agent in Chicago, and to render said renewal receipts valid they were in every event to be countersigned by defendant's general agent in Chicago; and that all of said renewal receipts were countersigned by defendant's general agent in Chicago before they were delivered to Jackson Riddle, or to Wm. G. Herron and by him to Jackson Riddle.

Fifth. That the jury will totally disregard all evidence in this case tending to show any custom with this defendant other than the custom is brought home to the knowledge of Jackson Riddle; all customs, general or special, with other parties, unless that custom was brought home to the knowledge of Jackson Riddle.

Sixth. That the jury will totally disregard all evidence in this case which tends to show any act on the part of anybody tending to show a waiver of any premium upon the policy of Jackson Riddle other than that which fell due on the 20th day of September, 1876.

Seventh. That by the terms of this contract in evidence the defendant was not required to give Jackson Riddle any notice, and that the

prior custom of notifying him does not show that defendant was required to do it.

Eight. The court will instruct this jury that if the defendant, by its agent at Chicago, mailed, postage prepaid at Chicago, a notice or notices of the time when the premiums for the year 1876 became due, and directed to Jackson Riddle, at the post-office which they had good reason to believe was his post-office, and Jackson Riddle did not receive these notices, that that is no excuse for his not paying the premium on the 20th day of September, when it became due.

237 Ninth. That the tender of the premium for the year 1876, being made after the death of Jackson Riddle, could not, had the same been accepted, revived the policy of insurance or continued it in force, unless the defendant at the time *of* the tender was made had full knowledge of the fact of the death of Jackson Riddle.

10th. Tenth. That from the 20th day of September, 1876, forward, until the time of the death of Jackson Riddle, the policy sued upon in this case was not in force; that it had expired by its terms on the 20th day of September, and that Jackson Riddle himself took the risk of his dying between that time and the time of the tender; and that if the jury further believe that Jackson Riddle had been misled by the former l*ani*'ncy of this company toward him, and had been led to believe that he need not pay the premium when it became due, but might pay it a few days thereafter, as he had been accustomed to paying before, and that if the premium was not tendered until after his death, and was refused by this company, the jury will return a verdict for the defendant.

11th. Eleventh. That the court will instruct the *the* jury that when the plaintiff placed upon the stand a witness that they cannot afterwards impeach the testimony of that witness, neither can they contradict the testimony of that witness, unless they show by competent evidence that they have been misled and taken by surprise, and that the witness since placed upon the stand has testified contrary to what said witness had informed the plaintiffs he would testify to before going upon the stand.

238 12th. Twel*f*th. That the court instruct the jury that the intent on the part of Jackson Riddle to pay this premium for the year 1876, not brought home to the knowledge of the defendant, is not competent evidence in this case, and should be disregarded by the jury.

The court refused to charge the jury in each and all of the above twelve requests of the defendant; to which refusal of the court the defendant then and there excepted, and still excepts.

After the argument of the counsel for plaintiffs and defendant, the court charged the jury, in part, as follows:

"If, therefore, the conduct of the company in its dealings with the assured in this case and with others similarly situated has been such as to induce a belief on his part that so much of the contract as provides for a forfeiture if the premium be not paid on the day it is due would not be enforced if payment were made within a reasonable period afterwards, the company ought not, in common justice, to be permitted to allege such forfeiture against one who has acted upon the belief and subsequently made or tendered the payment. And if the acts creating such belief were done by the agent and were subsequently approved by the company, either expressly or by receiving and retaining the premiums, with full knowledge of the facts, the same consequences should follow."

To the giving of which in charge to the jury the defendant then and there excepted and still excepts.

The court also charged the jury, in part, as follows:

239 "Therefore, if you find from the evidence in this case that the defendant company were in the habit of sending renewal receipts for the premium on this policy to its local agent, Wm. G. Herron, at the place of residence of the assured, duly signed by the president and secretary of the company, leaving their use subject entirely to the judgment of the local agent, and the said agent was accustomed to receive from the assured, without objection, the premium on said policy several days after the same became due and issue the receipt therefor, and the home company, or the managing agents or office's, had full knowledge of such practice of the local agent, and received from its agent such premiums so received and retained the same, the assured had a right to believe that the company waived a strict compliance, and you may find that there was a waiver by the company of the forfeiting clause of the policy; and if the assured, relying on such practice, within a reasonable or the usual time, paid or offered to pay said premium after the day the same was due, the said policy remained in full force and effect, and the company are liable thereon, notwithstanding the assured had died in the meantime."

"Now, I instruct you that if you find from the evidence in this case that it had been the invariable custom of the company to transmit to the assured by mail, or by its local agent, a statement of the amount of the premium due, after deducting the dividend, with a notice of the time when, the place where, and person to whom said premium could be paid, then the assured had good reason to expect and rely on such

240 statement & notice being sent to him, and if the insurance company, by its managing agent, had notice of the post-office address of the assured before the usual time of sending out such notice, but failed and neglected to transmit such statement & notice to the assured, at his post-office address, until the 4th day of October, and the same did not reach the assured or beneficiary under the policy until Oct. 6th, and that the assured or beneficiaries were ready and waiting to pay said premium when said notice and statement should be received, and by reason of such failure of the company to send such notice and statement, & by reason of that alone, the premium due in Sept., 1876, on said policy was not promptly paid, and that in a reasonable time thereafter, to wit, on Monday, the 9th day of October, 1876, the beneficiaries tendered to the company, at Chicago, the full amount of the premium due, then said policy did not lapse or become forfeited, notwithstanding the premium was not paid on the day named in the policy, and notwithstanding the assured had died on the 6th day of October, 1876."

To the giving of which charge the defendant then and there excepted and still excepts.

INSTRUCTIONS.

The following instructions were given by the court on its own motion:

First. The policy, with the application on which it was issued, contains the agreement of the parties, and to those instruments we must look to ascertain that agreement, and the policy provides, unless the premiums are promptly paid when due, the policy shall terminate or become

241 forfeited, and it further notifies the assured and beneficiaries that the agent of the company is not authorized to receive the pre-

mium after it is due or waive forfeitures. These conditions and limitations enter into and form part of the contract, and are binding on the parties, unless subsequently waived or modified, as hereinafter explained.

The company, in consideration of the prompt payment of the premiums, undertake to and do insure the life of the party for a large amount, and very properly have provided that the premium shall be paid promptly when due, and time is made material to the contract. This provision of the policy the company have the right to insist shall be faithfully performed, and if not performed that the contract shall not be determined and cease to exist. On the other hand, it being a provision for the benefit of the insurance company, said company may waive a strict performance of this condition, and may permit the insured to make payment of the premium after it is due, and if the company have, either expressly or by implication, waived a strict performance or prompt payment of the premiums when the same became due, then in such event the policy would not become forfeited by reason of such delay of payment, but would remain in full force and effect. The provisions for strict payment of premium and restriction on its agents were provisions beneficial to the company, and therefore the company could waive such provisions and could have authorized its agents to waive a strict compliance in this respect, notwithstanding the restriction in the policy prohibiting the agents from receiving payment of
242 premium after due or waiving forfeiture.

Now, the premium due on this policy September 20th, 1876, was not paid when due, and the important question for you to determine is whether or not the insurance company, or its agents authorized so to do, did waive a strict performance of the contract in this behalf, and in considering that question the general practice of the company in the respect may be taken into consideration.

If, therefore, the conduct of the company in its dealings with the assured in this case, and with others similarly situated, has been such as to induce a belief on his part that so much of the contract as provides for a forfeiture, if the premium be not paid on the day it is due, would not be enforced if payment were made within a reasonable period afterwards, the company ought not, in common justice, to be permitted to allege such forfeiture against one who has acted upon the belief, and subsequently made or tendered the payment. And if the acts creating such belief were done by the agent, and were subsequently approved by the company, either expressly or by receiving and retaining the premiums with full knowledge of the facts, the same consequences should follow. Therefore, if you find from the evidence in this case that the defendant company were in the habit of sending renewal receipts for the premium on this policy to its local agent, Wm. G. Herron, at the place of residence of the assured, duly signed by the president and secretary of the company, leaving their use subject entirely to
243 the judgment of the *of the* local agent, and the said agent was accustomed to receive from the assured without objection the premiums on said policy several days after the same became due, and issue the receipts therefor, and the home company, or its managing agents or officers, had full knowledge of such practice of the local agent, and received from its agent such premiums so received and retained the same, the assured had a right to believe that the company waived a strict compliance, and you may find that there was a waivor by the company of the forfeiting clause of the policy, and if the assured, relying on such practice, within a reasonable or the usual time, paid or

offered to pay said premium after the day the same was due, the said policy remained in full force and effect and the company are liable thereon, notwithstanding the assured had died in the meantime.

On the other hand, if the company had not authorized its local agent to whom the renewal receipts were sent, to extend the time for payment of the premium beyond the day named in the policy or did habitually accept from the assured through its said agent the premiums on said policy after the same became due, with full knowledge that the same have been so paid after due and the receipt issued to the assured by its agent, then you cannot find that the company had, either expressly or by implication, waived a strict compliance with the terms of the policy in reference to payment of the premiums, and the policy became forfeited or lapsed according to its terms and stipulations.

244 Second. The plaintiff" allege as another reason why said premium was not paid promptly when due that the company had been in the constant habit of notifying the assured of the amount due, on the premium, after deducting dividends, together with notices of the time and place and the persons to whom said premiums ought to be paid; that he relied upon such custom, and that the company, although notified of his post-office address, failed and neglected to send such statement of the premium of Sept. 20, 1876, to the assured until the 4th day of Oct. thereafter.

By the terms of this policy, the premium may be paid either at the home office at Hartford, or to an agent of the company producing a receipt signed by the pres't & sec'y of the company.

And by the terms of the application upon which this policy was issued, dividends due the assured were to be applied on payment of premium. Now, I instruct you, that if you find, from the evidence in this case, that it had been the invariable custom of the company to transmit to the assured by mail or by its local agent a statement of the amount of the premium due, after deducting the dividend, with a notice of the time when, the place where, and the person to whom said premium could be paid, then the assured had good reason to expect and rely on such statement, and notice being sent to him, and if the insurance company by its managing agent, had notice of the post-office address of the assured before the usual time of sending out such notice,

245 but failed and neglected to transmit such statement and notice to the assured at his post-office address until the 4th day of Oct. and the same did not reach the assured or beneficiary under the policy until Oct. 6th, and that the assured or beneficiaries were ready and waiting to pay said premium when said notice and statement should be received, and by reason of such failure of the company to send such notice and statement, and by reason of that alone, the premium due in Sept., 1876, on said policy, was not promptly paid, and that in a reasonable time thereafter, to wit, on Monday, the 9th day of October, 1876, the beneficiaries tendered to the company at Chicago, the full amount of the premium due, then said policy did not lapse or become forfeited, notwithstanding the premium was not paid on the day named in the policy, and notwithstanding the assured had died on the said 6th day of October, 1876. But if you find from the evidence that it had not been the uniform custom of the company to send to the assured the said notice and statement at or about the time the premium became due, or if you find that the company or managing agent had not been notified of the change of the post-office address of the assured until about the said 4th day of October, or that the company had in reality sent such notice by mail or otherwise at a prior date properly addressed to

the assured then it was not the fault of the company that the assured was not notified, and the want of such notice would not excuse the assured from making payment when the premium became due, Sept.
246 20th, and the policy would become forfeited. If you find that the policy had not lapsed or become forfeited as before stated, then the plaintiffs are entitled to recover. If, however, you find that *that* the policy had lapsed or become forfeited then you will find for the defendant.

And thereupon plaintiffs' counsel asked the court to instruct the jury if they found for the plaintiff they must deduct the amount of the premium due for the year 1879, to which defendant's counsel objected. Objection was by the court sustained and instruction refused.

Under the pleadings, evidence, and charge of the court, the jury found a verdict in favor of the plaintiffs.

Circuit court of the United States for the district of Kansas.

CAROLINE R. DOSTER, MARY J. RIDDLE, Taylor Riddle; Leon H. Riddle, Irma M. Riddle, & Frank Riddle; the three last-named minors, who sue by their next friend, Caroline R. Doster,
vs.
THE PHŒNIX MUTUAL LIFE INSURANCE Company, of Hartford, Connecticut. } No. 2012.

We, the jury in the said above entitled action, find for the plaintiffs and assess their damages against the defendant herein at the sum of five thousand seventy-seven & $\frac{6}{100}$ ($5,077$\frac{16}{100}$.)

T. J. STERNBERGH, *Foreman.*

247 Upon which verdict the court rendered judgments in favor of the plaintiff against the defendant for the sum of $5,077 *dollars* and 16 cents.

CAROLINE R. DOSTER, MARY J. RIDDLE, Taylor Riddle; Leon H. Riddle, Irma M. Riddle, and Frank Riddle; the three last named minors, who sue by their next friend, Caroline R. Doster, plaintiffs.
vs.
THE PHŒNIX MUTUAL LIFE INSURANCE Company of Hartford, Connecticut, defendant. } 2012.

Now, on this 14th day of December, 1878, the motion of plaintiff offering to remit $175 of the verdict found by the jury on the trial of this cause in favor of the plaintiffs, the same being amount of cash premium alleged to have been due September 20th, 1876, and tendered to defendant Oct. 9, 1876; and the plaintiffs appearing by their counsel, Frank Doster, and Mess. Scott & Lynn, and the defendant appearing by it; counsel H. E. Bernard; the arguments of counsel being heard, and the court being fully advised in the premises, orders that the motion and offer be denied; and it is hereby ordered that the offer be denied and the motion overruled.

To the order of the court in overruling said motion the plaintiff then and there excepted.

And on the same day the motion of defendant to set aside the verdict and grant a new trial coming on by agreement, the defendant appearing by its counsel, H. E. Bernard, and the plaintiffs by their counsel, Frank Doster & Mess. Scott & Lynn; the arguments of counsel
248 being heard and the court being fully advised orders that the motion be overruled; and it is hereby ordered that said motion of the defendant to set aside the verdict rendered in this cause and to grant the defendant a new trial be, and the same is hereby, overruled.

To order of the court in overruling said motion the defendant then and there excepted.

It is therefore now by the court here considered, ordered, and adjudged that Caroline R. Doster, Mary J. Riddle, Taylor Riddle; Leon H. Riddle, Irma N. Riddle & Frank Riddle; the three last named minors, who sue by their next friend, Caroline R. Doster, the plaintiff, herein, have and recover of and from The Phœnix Mutual Life Insurance Company, of Hartford, Connecticut, the defendant herein, the sum of five thousand seventy-seven and six cents, and also their costs in this action expended, and that execution issue therefor. And, by agreement of counsel for the plaintiff and defendant, it is ordered that the defendant have leave to file its supersedeas bond within ten days, and defendant, by agreement of parties, has leave to file its bill of exceptions, its assignment of errors, its prayer for reversal, and its citation and writ of errors on or before the second Monday in March, 1879, and the plaintiff have the like time to do same, on the overruling of their motion aforesaid.

249 Defendant afterwards filed a motion to set aside the judgment and grant it a new trial; said motion in words and figures, as follows:

In the circuit court of the United States for district of Kansas.

CAROLINE R. DOSTER, MARY J. RIDDLE, Taylor Riddle; Leon H. Riddle, Irma M. Riddle, and Frank, the three last named minors, who sue by their next friend, Caroline R. Doster. *versus* THE PHŒNIX MUTUAL LIFE INSURANCE COMPANY, of Hartford, Connecticut.	Motion to set aside the verdict and grant a new trial.

Comes now the defendant and moves the court to set aside the verdict of the jury and grant it new trial in this cause, for the following reasons:

1st. Because the court allowed the plaintiffs to read to the jury incompetent and irrelevant testimony, after the objection of the defendant then and there made thereto.

2nd. Because the court refused to charge the jury in this case as requested by the defendant to do, although the requested charge contained properly and fully the law governing this cause.

3rd. Because the court gave in his charge to the jury in *in* this cause matter not competent and not justified by the evidence before the jury in this case, and which was not the law in this case, under the objection of the defendant.

250 4th. Because the jury's verdict in this case is against the evidence in this case.

5th. Because there was no evidence in this case upon which the jury could properly find their verdict rendered therein.

6th. Because the court in refusing to charge the jury as requested by the defendant and gave an improper charge to the jury upon his own motion.

H. E. BERNARD,
Attorney for Defendant.

Upon the hearing of said motion it was overruled by the court; to which order of the court in overruling said motion the defendant then and there excepted and still excepts.

The defendant therefore prays the court to allow and sign this bill of exceptions, and that the same may be signed and sealed and made a part of the record in this case, which is done this 3rd day of March, 1879.

C. G. FOSTER, *Judge.*

(Endorsed:) No. 2012, Caroline R. Doster et al. vs. Phœnix Mutual Life Insurance Co. of Hartford, Conn. Bill of exceptions. Filed March 3rd, 1879, A. S. Thomas, clerk.

And on this day, to wit, March 3rd, 1879, at Nov. term, 1879, of said court, in the record of the proceeding, thereof in said entitled action is the following entry, to wit:

Journal entry.

251 CAROLINE R. DOSTER ET AL., PLAINTIFFS
vs.
THE PHŒNIX MUTUAL LIFE INSURANCE Company of Hartford, Connecticut. } 2012.

And now came said defendant, H. E. Bernard, its attorney, and presented its certain bill of exceptions taken on the trial of this cause, and the same is allowed and signed and order, to be placed on file with the pleadings, and made a part of the record in this case.

And on this day, to wit, Dec. 24th, 1878, the defendant, by its attorney, filed in the clerk's office of said court, its supersedeas bond in said entitled action; which said supersedeas bond is in the words and figures following, to wit:

Supersedeas bond.

Know all men by these presents, that we, James N. Burnes, William M. Wyeth, and James N. Burns, jr., are held and firmly bound unto Caroline R. Doster, Mary J. Riddle, Taylor Riddle, Leon H. Riddle, Irma M. Riddle, and Frank Riddle in the full and just sum of ten thousand dollars, to be paid to the said Caroline R. Doster, Mary J. Riddle, Taylor Riddle, Leon H. Riddle, Irma M. Riddle, and Frank Riddle, their attorneys, executors, administrators, or assigns; to which, payment well and truly to be made, we bind ourselves, our heirs, executors, and ad-

ministrators, jointly and severally, by these presents, sealed with our seals and dated this sixteenth day of December, A. D. 1878.

Whereas lately, at a trial had in a suit depending in circuit
252 court of the United States for the district of Kansas, between Caroline R. Doster, Mary J. Riddle, Taylor Riddle, Leon H. Riddle, Irma M. Riddle, and Frank Riddle, plaintiffs, and the Phœnix Mutual Life Insurance Company, defendant, judgment was rendered against the said Phœnix Mutual Life Insurance Company, defendant, and the said Phœnix Mutual Life Insurance Company having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and citation directed to the said Caroline R. Doster, Mary J. Riddle, Taylor Riddle, Leon H. Riddle, Irma M. Riddle, and Frank Riddle, citing and admonishing them to be and appear at the Supreme Court of the United States to be holden at Washington the second Monday of October next:

Now, therefore, the condition of the above obligation is such that, if the said Phœnix Mutual Life Insurance Company shall prosecute the writ of error to effect, and pay the judgment and interest thereon if unsuccessful in said writ of error, and answer all damages and costs if it fail to make its plea good, then the above obligations to be void; else to remain in full force and virtue.

WILLIAM M. WYETH. [SEAL.]
JAMES N. BURNES. [SEAL.]
JAMES N. BURNS, JR. [SEAL.]

Signed, sealed, and delivered in presence of—
T. J. CHEW, JR.
C. FRENGER.

Approved by—

253 We, the undersigned, make oath that we are each of us worth, over and above our debts and exemption by law allowed, the amounts set opposite our respective names.

WILLIAM M. WYETH.	$50,000.
JAMES N. BURNS.	$50,000.
JAMES N. BURNES, JR.	$10,000.

STATE OF MISSOURI,
County of Buchanan, ss:

Subscribed in my presence by William M. Wyeth and James N. Burnes, and sworn to before me this 16th day of December, A. D. 1878. Commissioned and qualified January 5, '78, for a term of four years.

[SEAL.] C. FRENGER,
Notary Public.

STATE OF KANSAS,
County of Atchison, ss:

Subscribed in my presence and sworn to before me this eighteenth day of December, A. D. 1878, by

C. G. FOSTER, *Judge.*

The above bond and sureties approved this 18th day of Dec., 1878.
C. G. FOSTER, *Judge.*

(Endorsed:) No. 2012. Supersedeas bond. Filed Dec. 24, 1878. A. S. Thomas, clerk.

254, 255 UNITED STATES AMERICA,
District of Kansas, ss:

I, A. S. Thomas, clerk of the circuit court of the United States of America for the district of Kansas, do hereby certify the foregoing to be a true, full, and perfect copy of the amended petition, answer to amended petition, reply, four demands for production of documents, notice to produce papers, journal entry empanelling jury, journal entry, order on plaintiffs to produce tender of money, journal entry, trial progressing, journal entry, verdict and notice of motion for a new trial, motion for new trial, judgment, bill of exceptions, journal entry allowing bill of exceptions, and supersedeas bond, in the action of Caroline R. Doster, Mary J. Riddle, Taylor Riddle; and Leon H. Riddle, age 13 years; Irma M. Riddle, age 9 years; and Frank Riddle, age 5 years; minors, who sue by their next friend, Caroline R. Doster, vs. The Phœnix Mutual Life Insurance Company of Hartford, Connecticut, No. 2012, in said court.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office in Topeka, in said district of Kansas, this 10th day of July, A. D. 1879.

[SEAL.] A. S. THOMAS, *Clerk.*

256, 257 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States for the district of Kansas, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea, which is in the said circuit court before you, between Caroline R. Doster, Mary J. Riddle, Taylor Riddle, and Leon H. Riddle, Irma M. Riddle, and Frank Riddle, by their next friend, Caroline R. Doster, plaintiffs, and The Phœnix Mutual Life Insurance Company, of Hartford, Connecticut, defendant, a manifest error hath happened, to the great damage of the said Phœnix Mutual Life Insurance Company, def't, as by its complaint appears: We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and custom of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, this 18th day of December, A. D. 1878.

[SEAL.] A. S. THOMAS,
Clerk of the Circuit Court of the United States, for the District of Kansas.

Allowed.

C. G. FOSTER, *Judge.*

258 (Indorsed:) No. 2012. The Phœnix Mutual Life Insurance

Company, plaintiff in error, vs. Caroline R. Daster et al., defendants in error. Writ of error. Filed Dec. 24, 1878. A. S. Thomas, clerk.

259 In the circuit court of the United States for district of Kansas.

CAROLINE R. DASTER, MARY J. RIDDLE, Taylor Riddle; and Leon H. Riddle, age 13 years; Irma M. Riddle, age 9 years; and Frank Riddle, age 5 years; minors, who sue by their next friend, Caroline R. Daster, pl'ffs,
versus
THE PHŒNIX MUTUAL LIFE INSURANCE COMpany, of Hartford, Connecticut, def't.

The citation.

The United States of America, greeting, to Caroline R. Daster, Mary J. Riddle, Taylor Riddle, and Leon H. Riddle, Irma M. Riddle, and Frank Riddle, by their next friend, Caroline R. Doster:

You are each and all of you hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at Washington, in the District of Columbia, on the second Monday of October next, pursuant to a writ of error filed in the clerk's
260 office of circuit court of the United States, within and for the district of Kansas, wherein the Phœnix Mutual Life Insurance Company, of Hartford, Connecticut, is plaintiff in error, and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable C. G. Foster, the judge of the United States district court for the district of Kansas, and sitting as a judge of the circuit court of the United States, within and for the district of Kansas, before whom the above-entitled cause was tried this 20th day of December, A. D. 1878.

C. G. FOSTER, *Judge.*

On this 6th day of March, A. D. 1879, personally appeared Howel Jones before me, the subscriber, A. S. Thomas, clerk of the circuit court of the United States for the district of Kansas, and makes oath that he delivered a true copy of the within citation to Frank
261 Doster, one of the attorneys of record for all of the defendants in error in this cause.

HOWEL JONES.

Subscribed and sworn to before me this 6th day of March, 1879.
[SEAL.] A. S. THOMAS, *Clerk.*

(Indorsed:) No. 2012. In the circuit court of the United States, district of Kansas. Caroline R. Doster et al. vs. Phœnix Life Insuranee Company. The citation. Filed Dec. 24, 1878. A. S. Thomas, clerk. Filed M'ch 6, 1879. A. S. Thomas, clerk.

(Indorsement on cover:) No. 232. The Phœnix Mutual Life Insurance Company of Hartford, Conn., plaintiff in error, vs. Caroline R. Doster, Mary J. Riddle, Taylor Riddle; and L. H. Riddle, I. M. Riddle & F. Riddle, by their next friend, Caroline R. Doster. Kansas C. C. U. S. Filed 21st August, 1879.